

SECOND REGULAR SESSION

HOUSE BILL NO. 1956

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES HILGEMANN, HENDRICKSON, CAMPBELL,
BEARDEN (Co-sponsors) AND LOWE.

Read 1st time February 14, 2002, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

4173L.011

AN ACT

To create chapter 449, RSMo, by enacting seventy-six new sections relating to the uniform planned community act.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 449, RSMo, is created by enacting seventy-six new sections, to be
2 known as sections 449.101, 449.102, 449.103, 449.104, 449.105, 449.106, 449.107, 449.108,
3 449.109, 449.110, 449.111, 449.112, 449.113, 449.114, 449.201, 449.202, 449.203, 449.204,
4 449.205, 449.206, 449.207, 449.208, 449.209, 449.210, 449.211, 449.212, 449.213, 449.214,
5 449.215, 449.216, 449.217, 449.218, 449.219, 449.220, 449.221, 449.222, 449.223, 449.301,
6 449.302, 449.303, 449.304, 449.305, 449.306, 449.307, 449.308, 449.309, 449.310, 449.311,
7 449.312, 449.313, 449.314, 449.315, 449.316, 449.317, 449.318, 449.319, 449.401, 449.402,
8 449.403, 449.404, 449.405, 449.406, 449.407, 449.408, 449.409, 449.410, 449.411, 449.412,
9 449.413, 449.414, 449.415, 449.416, 449.417, 449.418, 449.419 and 449.420, to read as follows:

**449.101. This chapter shall be known and may be cited as the "Uniform Planned
2 Community Act".**

**449.102. 1. This chapter applies to all planned communities created within this
2 state after the effective date of this chapter; unless such a planned community contains no
3 more than twelve units, and is not subject to any development rights.**

**4. Except as provided in subsection 3 of this section, sections 449.105, 449.106,
5 449.107, 449.203, 449.204, 449.221, subdivisions (1) to (6) and (11) to (15) of subsection 1
6 of section 449.302, sections 449.311, 449.316, 449.318, 449.409 and 449.417, and section
7 449.103, to the extent necessary in construing any of those sections, apply to all planned
8 communities created in this state before the effective date of this chapter; but those sections
9 apply only with respect to events and circumstances occurring after the effective date of**

10 this chapter and do not invalidate existing provisions of the declaration, bylaws or plats
11 of those planned communities.

12 **3. If a planned community created within this state before the effective date of this**
13 **chapter contains no more than twelve units and is not subject to any development rights,**
14 **it is subject only to sections 449.105, 449.106 and 449.107 unless the declaration is amended**
15 **in conformity with applicable law and with the procedures and requirements of the**
16 **declaration to take advantage of the provisions of subsection 4 of this section, in which case**
17 **all the sections enumerated in subsection 2 of this section apply to that planned community.**

18 **4. In the case of amendments to the declaration, bylaws and plats of any planned**
19 **community created before the effective date of this chapter:**

20 **(1) If the result accomplished by the amendment was permitted by law prior to the**
21 **adoption of this chapter, the amendment may be made either in accordance with that law,**
22 **in which case that law applies to that amendment, or may be made pursuant to this**
23 **chapter;**

24 **(2) If the result accomplished by the amendment is permitted by this chapter, and**
25 **was not permitted by law prior to this chapter, the amendment may be made pursuant to**
26 **this chapter. An amendment to the declaration, bylaws or plats authorized by this**
27 **subsection to be made pursuant to this chapter must be adopted in conformity with**
28 **applicable law and with the procedures and requirements specified by that amendment.**
29 **If any such amendment grants to any person any rights, powers or privileges permitted by**
30 **this chapter, all correlative obligations, liabilities and restrictions in this chapter also apply**
31 **to that person.**

32 **5. This chapter does not apply to a planned community in which all units are**
33 **restricted exclusively to nonresidential use unless the declaration provides that the chapter**
34 **does apply to that planned community. This chapter applies to a planned community**
35 **containing both units which are restricted exclusively to nonresidential use, and other units**
36 **which are not so restricted, only if the declaration so provides or if the real estate**
37 **comprising the units which may be used for residential purposes would be a planned**
38 **community in the absence of the units which may not be used for residential purposes.**

39 **6. This chapter does not apply to planned communities or units located outside this**
40 **state, but sections 449.402 to 449.408 apply to all contracts for the disposition thereof**
41 **signed in this state by any party.**

449.103. In the declaration and bylaws, unless specifically provided otherwise or
2 **the context otherwise requires, and in this chapter, the following terms shall mean:**

3 **(1) "Affiliate of a declarant", any person who controls, is controlled by, or is under**
4 **common control with a declarant. A person "controls" a declarant if the person (a) is a**

5 general partner, officer, director, or employer of the declarant, (b) directly or indirectly
6 or acting in concert with one or more other persons, or through one or more subsidiaries,
7 owns, controls, holds with power to vote, or holds proxies representing, more than twenty
8 percent of the voting interest in the declarant, (c) controls in any manner the election of a
9 majority of the directors of the declarant, or (d) has contributed more than 20 percent of
10 the capital of the declarant. A person "is controlled by" a declarant if the declarant (a) is
11 a general partner, officer, director, or employer of the person, (ii) directly or indirectly or
12 acting in concert with one or more other persons, or through one or more subsidiaries,
13 owns, controls, holds with power to vote, or holds proxies representing, more than twenty
14 percent of the voting interest in the person, (c) controls in any manner the election of a
15 majority of the directors of the person, or (d) has contributed more than twenty percent
16 of the capital of the person. Control does not exist if the powers described in this
17 paragraph are held solely as security for an obligation and are not exercised;

18 (2) "Allocated interests", the common expense liability and votes in the association
19 allocated to each unit;

20 (3) "Association" or "unit owners association", the unit owners association
21 organized pursuant to section 449.301;

22 (4) "Common elements", any real estate within a planned community owned or
23 leased by the association, other than a unit;

24 (5) "Common expense liability", the liability for common expenses allocated to each
25 unit pursuant to section 449.207;

26 (6) "Common expenses", expenditures made by or financial liabilities of the
27 association, together with any allocations to reserves;

28 (7) "Condominium", real estate, portions of which are designated for separate
29 ownership and the remainder of which is designated for common ownership solely by the
30 owners of those portions. Real estate is not a condominium unless the undivided interests
31 in the common elements are vested in the unit owners;

32 (8) "Conversion building", a building that at any time before creation of the
33 planned community was occupied wholly or partially by persons other than purchasers
34 and persons who occupy with the consent of purchasers;

35 (9) "Cooperative", real estate owned by a corporation, trust, trustee, partnership
36 or unincorporated association, where the governing instruments of that organization
37 provide that each of the organization's members, partners, stockholders or beneficiaries
38 is entitled to exclusive occupancy of a designated portion of that real estate;

39 (10) "Dealer", a person in the business of selling units for such person's own
40 account;

- 41 (11) **"Declarant"**, any person or group of persons acting in concert who (a) as part
42 of a common promotional plan, offers to dispose of such person's interest in a unit not
43 previously disposed of or (b) reserves or succeeds to any special declarant right;
- 44 (12) **"Declaration"**, any instruments, however denominated, that create a planned
45 community, and any amendments to those instruments;
- 46 (13) **"Development rights"**, any right or combination of rights reserved by a
47 declarant in the declaration (a) to add real estate to a planned community; (b) to create
48 units, common elements or limited common elements within a planned community; (c) to
49 subdivide units or convert units into common elements; or (d) to withdraw real estate from
50 a planned community;
- 51 (14) **"Dispose"** or **"disposition"**, a voluntary transfer to a purchaser of any legal
52 or equitable interest in a unit, but does not include the transfer or release of a security
53 interest;
- 54 (15) **"Executive board"**, the body, regardless of name, designated in the declaration
55 to act on behalf of the association;
- 56 (16) **"Identifying number"**, a symbol or address that identifies only one unit in a
57 planned community;
- 58 (17) **"Leasehold planned community"**, a planned community in which all or a
59 portion of the real estate is subject to a lease the expiration or termination of which will
60 terminate the planned community or reduce its size;
- 61 (18) **"Limited common element"**, a portion of the common elements allocated by
62 the declaration or by operation of subsection 2 or 4 of section 449.202 for the exclusive use
63 of one or more but fewer than all of the units;
- 64 (19) **"Master association"**, an organization described in section 449.220, whether
65 or not it is also an association described in section 449.301;
- 66 (20) **"Offering"**, any advertisement, inducement, solicitation or attempt to
67 encourage any person to acquire any interest in a unit, other than as security for an
68 obligation. An advertisement in a newspaper or other periodical of general circulation, or
69 in any broadcast medium to the general public, of a planned community not located in this
70 state, is not an offering if the advertisement states that an offering may be made only in
71 compliance with the law of the jurisdiction in which the planned community is located;
- 72 (21) **"Person"**, a natural person, corporation, business trust, estate, trust,
73 partnership, association, joint venture, government, governmental subdivision or agency,
74 or other legal or commercial entity. In the case of a land trust, however, person means the
75 beneficiary of the trust rather than the trust or the trustee;
- 76 (22) **"Planned community"**, real estate with respect to which any person, by virtue

77 of such person's ownership of a unit, is obligated to pay for real property taxes, insurance,
78 premiums, maintenance or improvement of other real estate described in a declaration.
79 For purposes of this chapter, neither a cooperative nor a condominium is a planned
80 community, but real estate comprising a condominium or cooperative may be part of a
81 planned community. "Ownership of a unit" does not include holding a leasehold interest
82 of less than twenty years in a unit, including renewal options;

83 (23) "Purchaser", any person, other than a declarant or a person in the business
84 of selling real estate for such person's own account, who by means of a voluntary transfer
85 acquires a legal or equitable interest in a unit, other than (a) a leasehold interest, including
86 renewal options, of less than twenty years, or (b) as security for an obligation;

87 (24) "Real estate", any leasehold or other estate or interest in, over or under land,
88 including structures, fixtures and other improvements and interests which by custom,
89 usage or law pass with a conveyance of land though not described in the contract of sale
90 or instrument of conveyance. Real estate includes parcels with or without upper or lower
91 boundaries, and spaces that may be filled with air or water;

92 (25) "Residential purposes", use for dwelling or recreational purposes, or both;

93 (26) "Security interest", an interest in real estate or personal property, created by
94 contract or conveyance, which secures payment or performance of an obligation. The term
95 includes a lien created by a mortgage, deed of trust, trust deed, security deed, contract for
96 deed, land sales contract, lease intended as security, assignment of lease or rents intended
97 as security, pledge of an ownership interest in an association and any other consensual lien
98 or title retention contract intended as security for an obligation;

99 (27) "Special declarant rights", rights reserved for the benefit of a declarant (a) to
100 complete improvements indicated on plats and plans filed with the declaration; (b) to
101 exercise any development right; (c) to maintain sales offices, management offices, signs
102 advertising the planned community, and models; (d) to use easements through the common
103 elements for the purpose of making improvements within the planned community or within
104 real estate which may be added to the planned community; (e) to make the planned
105 community part of a larger planned community or group of planned communities; (f) to
106 make the planned community subject to a master association; or (g) to appoint or remove
107 any officer or executive board member of the association or any master association during
108 any period of declarant control. Special declarant rights are interests in real estate for all
109 purposes;

110 (28) "Time share", a right to occupy a unit or any of several units during five or
111 more separated time periods over a period of at least five years, including renewal options,
112 whether or not coupled with an estate or interest in a planned community or a specified

113 portion thereof;

114 (29) "Unit", a physical portion of the planned community designated for separate
115 ownership or occupancy, the boundaries of which are described pursuant to subdivision
116 (5) of subsection 1 of section 449.205;

117 (30) "Unit owner", a declarant or other person who owns a unit, or a lessee of a
118 unit in a leasehold planned community whose lease expires simultaneously with any lease
119 the expiration or termination of which will remove the unit from the planned community,
120 but does not include a person having an interest in a unit solely as security for an
121 obligation.

449.104. Except as expressly provided in this chapter, provisions of this chapter
2 may not be varied by agreement, and rights conferred by this chapter may not be waived.
3 A declarant may not act under a power of attorney, or use any other device, to evade the
4 limitations or prohibitions of this chapter or the declaration.

449.105. 1. If there is any unit owner other than a declarant, each unit that has
2 been created, together with its interest in the common elements, constitutes for all purposes
3 a separate parcel of real estate.

4 2. If there is any unit owner other than a declarant, each unit must be separately
5 taxed and assessed, and no separate tax or assessment may be rendered against any
6 common elements for which a declarant has reserved no development rights.

7 3. Any portion of the common elements for which the declarant has reserved any
8 development rights must be separately taxed and assessed against the declarant, and the
9 declarant alone is liable for payment of those taxes.

10 4. If there is no unit owner other than a declarant, the real estate comprising the
11 planned community may be taxed and assessed in any manner provided by law.

449.106. 1. Except as provided in subsection 2 of this section, no building code may
2 impose any requirement upon any structure in a planned community which it would not
3 impose upon a physically identical structure under a different form of ownership.
4 Otherwise, no provision of this chapter invalidates or modifies any provision of any
5 building code.

6 2. Subsection 1 of this section shall not apply to any ordinance, rule, regulation,
7 charter provision or contract provision relating to the financing of housing construction,
8 rehabilitation or purchases provided by or through a housing finance program established
9 and operated pursuant to state or federal law by a state or local agency or local unit of
10 government or to any ordinance which has as its purpose the application or enforcement
11 of minimum housing standards.

449.107. 1. If a unit is acquired by eminent domain, or if part of a unit is acquired

2 by eminent domain leaving the unit owner with a remnant which may not practically or
3 lawfully be used for any purpose permitted by the declaration, the award must compensate
4 the unit owner for said unit owner's unit and its interest in the common elements, whether
5 or not any common elements are acquired. Upon acquisition, unless the decree otherwise
6 provides, that unit's allocated interests are automatically reallocated to the remaining units
7 in proportion to the respective allocated interests of those units before the taking, and the
8 association shall promptly prepare, execute and record an amendment to the declaration
9 reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken
10 pursuant to this subsection is thereafter a common element.

11 2. Except as provided in subsection 1 of this section, if part of a unit is acquired by
12 eminent domain, the award must compensate the unit owner for the reduction in value of
13 the unit and its interest in the common elements, whether or not any common elements are
14 acquired. Upon acquisition, unless the decree otherwise provides:

15 (1) That units allocated interests are reduced in proportion to the reduction in the
16 size of the unit, or on any other basis specified in the declaration, and

17 (2) The portion of the allocated interests divested from the partially acquired unit
18 are automatically reallocated to that unit and the remaining units in proportion to the
19 respective allocated interests of those units before the taking, with the partially acquired
20 unit participating in the reallocation on the basis of its reduced allocated interests.

21 3. If part of the common elements is acquired by eminent domain, the portion of
22 the award attributable to the common elements taken must be paid to the association. Any
23 portion of the award attributable to the acquisition of a limited common element must be
24 equally divided among the owners of the units to which that limited common element was
25 allocated at the time of acquisition.

26 4. The court decree shall be recorded in every county in which any portion of the
27 planned community is located.

449.108. The principles of law and equity, including the law of corporations and
2 unincorporated associations, the law of real property and the law relative to capacity to
3 contract, principal and agent, eminent domain, estoppel, fraud, misrepresentation, duress,
4 coercion, mistake, receivership, substantial performance, or other validating or
5 invalidating cause supplement the provisions of this chapter, except to the extent
6 inconsistent with this chapter.

449.109. This chapter being a general chapter intended as a unified coverage of its
2 subject matter, no provision shall be construed to be impliedly repealed by subsequent
3 legislation if that construction can reasonably be avoided.

449.110. This chapter shall be applied and construed so as to effectuate its general

2 purpose to make uniform the law with respect to the subject of this chapter among states
3 enacting it.

449.111. If any provision of this chapter or the application thereof to any person
2 or circumstances is held invalid, the invalidity does not affect other provisions or
3 applications of this chapter which can be given effect without the invalid provisions or
4 application, and to this end the provisions of this chapter are severable.

449.112. 1. The court, upon finding as a matter of law that a contract or contract
2 clause was unconscionable at the time the contract was made, may refuse to enforce the
3 contract, enforce the remainder of the contract without the unconscionable clause, or limit
4 the application of any unconscionable clause in order to avoid an unconscionable result.

5 2. Whenever it is claimed, or appears to the court, that a contract or any contract
6 clause is or may be unconscionable, the parties, in order to aid the court in making the
7 determination, shall be afforded a reasonable opportunity to present evidence as to:

8 (1) The commercial setting of the negotiations;

9 (2) Whether a party has knowingly taken advantage of the inability of the other
10 party reasonably to protect such other party's interests by reason of physical or mental
11 infirmity, illiteracy or inability to understand the language of the agreement or similar
12 factors;

13 (3) The effect and purpose of the contract or clause; and

14 (4) If a sale, any gross disparity, at the time of contracting, between the amount
15 charged for the property and the value of the property measured by the price at which
16 similar property was readily obtainable in similar transactions, but a disparity between the
17 contract price and the value of the property measured by the price at which similar
18 property was readily obtainable in similar transactions does not, of itself, render the
19 contract unconscionable.

449.113. Every contract or duty governed by this chapter imposes an obligation of
2 good faith in its performance or enforcement.

449.114. 1. The remedies provided by this chapter shall be liberally administered
2 to the end that the aggrieved party is put in as good a position as if the other party had
3 fully performed. However, consequential, special or punitive damages may not be awarded
4 except as specifically provided in this chapter or by other rule of law.

5 2. Any right or obligation declared by this chapter is enforceable by judicial
6 proceeding.

449.201. A planned community may be created pursuant to this chapter only by
2 recording a declaration executed in the same manner as a deed. The declaration must be
3 recorded in every county in which any portion of the planned community is located, and

4 must be indexed in the name of the planned community and the association and in the
5 name of each person executing the declaration.

449.202. Except as provided by the declaration:

2 (1) If walls, floors or ceilings of a unit are designated as the boundaries of that unit,
3 all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished
4 flooring and any other materials constituting any part of the finished surfaces thereof are
5 a part of the unit, and all other portions of the walls, floors or ceilings are a part of the
6 common elements;

7 (2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any
8 other fixture lies partially within and partially outside the designated boundaries of a unit,
9 any portion thereof serving only that unit is a limited common element allocated solely to
10 that unit, and any portion thereof serving more than one unit or any portion of the
11 common elements is a part of the common elements;

12 (3) Subject to the provisions of subdivision (2) of this section, all spaces, interior
13 partitions and other fixtures and improvements within the boundaries of a unit are a part
14 of the unit;

15 (4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies,
16 patios, and all exterior doors and windows or other fixtures designed to serve a single unit,
17 but located outside the unit's boundaries, are limited common elements allocated
18 exclusively to that unit.

449.203. 1. All provisions of the declaration and bylaws are severable.

2 2. The rule against perpetuities may not be applied to defeat any provision of the
3 declaration, bylaws, rules or regulations adopted pursuant to subdivision (1) of subsection
4 1 of section 449.302.

5 3. In the event of a conflict between the provisions of the declaration and the
6 bylaws, the declaration prevails except to the extent the declaration is inconsistent with this
7 chapter.

8 4. Title to a unit and common elements is not rendered unmarketable or otherwise
9 affected by reason of an insubstantial failure of the declaration to comply with this chapter.
10 Whether a substantial failure impairs marketability of title is not affected by this chapter.

449.204. A description of a unit which sets forth the name of the planned
2 community, the recording data for the declaration, the county in which the planned
3 community is located and the identifying number of the unit is a sufficient legal description
4 of that unit and all rights, obligations and interests appurtenant to that unit which were
5 created by the declaration or bylaws.

449.205. 1. The declaration for a planned community must contain:

- 2 (1) The names of the planned community and the association;
- 3 (2) The name of every county in which any part of the planned community is
4 situated;
- 5 (3) A legally sufficient description of the real estate included in the planned
6 community;
- 7 (4) A statement of the maximum number of units which the declarant reserves the
8 right to create;
- 9 (5) A description of the boundaries of each unit created by the declaration,
10 including the unit's identifying number;
- 11 (6) A description of any real estate which is or must become common elements and
12 limited common elements, other than those specified in subdivisions (2) and (4) of section
13 449.202, as provided in section 449.209;
- 14 (7) A description of any real estate, except real estate subject to development rights,
15 which may be allocated subsequently as limited common elements, other than limited
16 common elements specified in subdivisions (2) and (4) of section 449.202, together with a
17 statement that they may be so allocated;
- 18 (8) A description of any development rights and other special declarant rights
19 reserved by the declarant, together with a legally sufficient description of the real estate
20 to which each of those rights applies and a time limit within which each of those rights
21 must be exercised;
- 22 (9) If any development right may be exercised with respect to different parcels of
23 the real estate at different times, a statement to that effect together with:
 - 24 (a) Either a statement fixing the boundaries of those portions and regulating the
25 order in which those portions may be subjected to the exercise of each development right,
26 or a statement that no assurances are made in those regards; and
 - 27 (b) A statement as to whether, if any development right is exercised in any portion
28 of the real estate subject to that development right, that development right must be
29 exercised in all or in any other portion of the remainder of that real estate;
- 30 (10) Any other conditions or limitations under which the rights described in
31 subdivision (8) of subsection 1 of this section may be exercised or will lapse;
- 32 (11) An allocation to each unit of the allocated interests in the manner described
33 in section 449.207;
- 34 (12) Any restrictions on use, occupancy and alienation of the units;
- 35 (13) The recording data for recorded easements and licenses appurtenant to or
36 included in the planned community or to which any portion of the planned community is
37 or may become subject by virtue of a reservation in the declaration; and

38 (14) All matters required by sections 449.206, 449.207, 449.208, 449.209, 449.215,
39 449.216, and subsection 4 of section 449.303.

40 2. The declaration may contain any other matters the declarant deems appropriate.
449.206. 1. Any lease the expiration or termination of which may terminate the
2 planned community or reduce its size shall be recorded. Every lessor of those leases must
3 execute the declaration, and the declaration shall state:

- 4 (1) The recording data for the lease;
- 5 (2) The date on which the lease is scheduled to expire;
- 6 (3) A legally sufficient description of the real estate subject to the lease;
- 7 (4) Any right of the unit owners to redeem the revision and the manner whereby
8 those rights may be exercised, or a statement that they do not have those rights;
- 9 (5) Any right of the unit owners to remove any improvements after the expiration
10 or termination of the lease, or a statement that they do not have those rights; and
- 11 (6) Any rights of the unit owners to renew the lease and the conditions of any
12 renewal, or a statement that they do not have those rights.

13 2. After the declaration for a leasehold planned community is recorded, neither the
14 lessor nor any successor in interest may terminate the leasehold interest of a unit owner
15 who makes timely payment of such unit owner's share of the rent and otherwise complies
16 with all covenants which, if violated, would entitle the lessor to terminate the lease. A unit
17 owner's leasehold interest is not affected by failure of any other person to pay rent or fulfill
18 any other covenant.

19 3. Acquisition of the leasehold interest of any unit owner by the owner of the
20 reversion or remainder does not merge the leasehold and fee simple interests unless the
21 leasehold interests of all unit owners subject to that reversion or remainder are acquired.

22 4. If the expiration or termination of a lease decreases the number of units in a
23 planned community, the allocated interests shall be reallocated in accordance with
24 subsection 1 of section 449.107 as though those units had been taken by eminent domain.
25 Reallocations shall be confirmed by an amendment to the declaration prepared, executed
26 and recorded by the association.

449.207. 1. The declaration shall allocate a fraction or percentage of the common
2 expenses of the association, and a portion of the votes in the association to each unit in the
3 planned community, and state the formulas used to establish those allocations. Those
4 allocations may not discriminate in favor of units owned by the declarant.

5 2. If units may be added to or withdrawn from the planned community, the
6 declaration must state the formulas to be used to reallocate the allocated interests among
7 all units included in the planned community after the addition or withdrawal.

8 **3. The declaration may provide:**

9 **(1) That different allocations of votes shall be made to the units on particular**
10 **matters specified in the declaration;**

11 **(2) For cumulative voting only for the purpose of electing members of the executive**
12 **board; and**

13 **(3) For class voting on specified issues affecting the class if necessary to protect**
14 **valid interests of the class. A declarant may not utilize cumulative or class voting for the**
15 **purpose of evading any limitation imposed on declarants by this chapter, nor may units**
16 **constitute a class because they are owned by a declarant.**

17 **4. Except for minor variations due to rounding, the sum of the common expense**
18 **liabilities allocated at any time to all the units must equal one if stated as a fraction or one**
19 **hundred percent if stated as a percentage. In the event of a discrepancy between an**
20 **allocated interest and the result derived from application of the pertinent formula, the**
21 **allocated interest prevails.**

449.208. 1. Except for the limited common elements described in subdivisions (2)
2 **and (4) of section 449.202, the declaration shall specify to which unit or units each limited**
3 **common element is allocated. That allocation may not be altered without the consent of**
4 **the unit owners whose units are affected.**

5 **2. Except as the declaration otherwise provides, a limited common element may be**
6 **reallocated by an amendment to the declaration executed by the unit owners between or**
7 **among whose units the reallocation is made. The persons executing the amendment shall**
8 **provide a copy thereof to the association, which shall record it. The amendment shall be**
9 **recorded in the names of the parties and the planned community.**

10 **3. A common element not previously allocated as a limited common element may**
11 **not be so allocated except pursuant to provisions in the declaration made in accordance**
12 **with subdivision (7) of subsection 1 of section 449.205. The allocations shall be made by**
13 **amendments to the declaration.**

449.209. 1. Plats and plans are a part of the declaration and are required for all
2 **planned communities subject to the chapter. Separate plats and plans are not required by**
3 **this chapter if all the information required by this section is contained in either a plat or**
4 **plan. Each plat and plan must be clear and legible and contain a certification that the plat**
5 **or plan contains all information required by this section.**

6 **2. Each plat must show or project:**

7 **(1) The name and a survey or general schematic map of the entire planned**
8 **community;**

9 **(2) The location and dimensions of all real estate not subject to development rights,**

10 or subject only to the development right to withdraw, and the location and dimensions of
11 all existing improvements within that real estate;

12 (3) A legally sufficient description of any real estate subject to development rights,
13 labeled to identify the rights applicable to each parcel;

14 (4) The extent of any encroachments by or upon any portion of the planned
15 community;

16 (5) To the extent feasible, a legally sufficient description of all easements serving
17 or burdening any portion of the planned community;

18 (6) Except as provided in subsection 7 of this section, the approximate location and
19 dimensions of any vertical unit boundaries not shown or projected on plans recorded
20 pursuant to subsection 4 of this section and that unit's identifying number;

21 (7) Except as provided in subsection 7 of this section, the approximate location with
22 reference to an established datum of any horizontal unit boundaries not shown or
23 projected on plans recorded pursuant to subsection 4 of this section and that unit's
24 identifying number;

25 (8) A legally sufficient description of any real estate in which the unit owners will
26 own only an estate for years, labeled as "leasehold real estate";

27 (9) The distance between noncontiguous parcels of real estate comprising the
28 planned community;

29 (10) The approximate location and dimensions of limited common elements,
30 including porches, balconies and patios, other than parking spaces and the other limited
31 common elements described in subdivisions (2) and (4) of section 449.202; and

32 (11) In the case of real estate not subject to development rights, all other matters
33 customarily shown on land surveys.

34 3. A plat may also show the intended location and dimensions of any contemplated
35 improvement to be constructed anywhere within the planned community. Any
36 contemplated improvement shown must be labeled either "SHALL BE BUILT" or "NEED
37 NOT BE BUILT".

38 4. Except as provided in subsection 7 of this section, to the extent not shown or
39 projected on the plats, plans of the units must show or project:

40 (1) The approximate location and dimensions of the vertical boundaries of each
41 unit and that unit's identifying number;

42 (2) The approximate location of any horizontal unit boundaries, with reference to
43 an established datum, and that unit's identifying number; and

44 (3) The approximate location of any units in which the declarant has reserved the
45 right to create additional units or common elements, identified appropriately.

46 **5. Unless the declaration provides otherwise, the horizontal boundaries of part of**
47 **a unit located outside of a building have the same elevation as the horizontal boundaries**
48 **of the inside part, and need not be depicted on the plats and plans.**

49 **6. Upon exercising any development right, the declarant shall record either new**
50 **plats and plans necessary to conform to the requirements of subsections 1, 2 and 3 of this**
51 **section, or new certifications of plats and plans previously recorded if those plats and plans**
52 **conform to the requirements of those subsections.**

53 **7. Any certification of a plat required by this section must be made by a registered**
54 **and licensed surveyor, and any certification of a plan required by subsection 2 of section**
55 **449.201 shall be made by an architect or engineer.**

56 **8. Plats and plans need not show the location and dimensions of the units'**
57 **boundaries or their limited common elements if:**

58 **(1) The plat shows the location and dimensions of all buildings containing or**
59 **comprising the units; and**

60 **(2) The declaration includes other information that shows or contains a narrative**
61 **description of the general layout of the units in those buildings and the limited common**
62 **elements allocated to those units.**

449.210. 1. To exercise any development right reserved pursuant to subdivision (8)
2 **of subsection 1 of section 449.205, the declarant shall prepare, execute and record an**
3 **amendment to the declaration and comply with section 449.209. The declarant is the**
4 **owner of any units thereby created. The amendment to the declaration must assign an**
5 **identifying number to each new unit created, and except in the case of subdivision or**
6 **conversion of units described in subsection 2 of this section, reallocate the allocated**
7 **interests among all units. The amendment must describe any common elements and any**
8 **limited common elements thereby created and, in the case of limited common elements,**
9 **designate the units to which each is allocated to the extent required by section 449.208.**

10 **2. Development rights may be reserved within any real estate added to the planned**
11 **community if the amendment adding that real estate includes all matters required by**
12 **section 449.205 or 449.206, as the case may be, and the plats and plans include all matters**
13 **required by section 449.209. This provision does not extend the time limit on the exercise**
14 **of development rights imposed by the declaration pursuant to subdivision (8) of subsection**
15 **1 of section 449.205.**

16 **3. Whenever a declarant exercises a development right to subdivide or convert a**
17 **unit previously created into additional units, common elements, or both:**

18 **(1) If the declarant converts the unit entirely to common elements, the amendment**
19 **to the declaration must reallocate all the allocated interests of that unit among the other**

20 units as if that unit had been taken by eminent domain;

21 (2) If the declarant subdivides the unit into two or more units, whether or not any
22 part of the unit is converted into common elements, the amendment to the declaration must
23 reallocate all the allocated interests of the unit among the units created by the subdivision
24 in any reasonable manner prescribed by the declarant.

25 4. If the declaration provides, pursuant to subdivision (8) of subsection 1 of section
26 449.205, that all or a portion of the real estate is subject to the development right of
27 withdrawal:

28 (1) If all the real estate is subject to withdrawal, and the declaration does not
29 describe separate portions of real estate subject to that right, none of the real estate may
30 be withdrawn after a unit has been conveyed to a purchaser; and

31 (2) If a portion or portions are subject to withdrawal, no portion may be
32 withdrawn after a unit in that portion has been conveyed to a purchaser.

449.211. Subject to the provisions of the declaration and other provisions of law,
2 a unit owner:

3 (1) May make any improvements or alterations to said unit owner's unit that do not
4 impair the structural integrity or mechanical systems or lessen the support of any portion
5 of the planned community;

6 (2) May not change the appearance of the common elements, or the exterior
7 appearance of a unit or any other portion of the planned community, without permission
8 of the association;

9 (3) After acquiring an adjoining unit or an adjoining part of an adjoining unit, may
10 remove or alter any intervening partition or create apertures therein, even if the partition
11 in whole or in part is a common element, if those acts do not impair the structural integrity
12 or mechanical systems or lessen the support of any portion of the planned community.
13 Removal of partitions or creation of apertures pursuant to this subdivision is not an
14 alteration of boundaries.

449.212. 1. Subject to the provisions of the declaration and other provisions of law,
2 the boundaries between adjoining units may be relocated by an amendment to the
3 declaration upon application to the association by the owners of those units. If the owners
4 of the adjoining units have specified a reallocation between their units of their allocated
5 interests, the application must state the proposed reallocations. Unless the executive board
6 determines, within thirty days, that the reallocations are unreasonable, the association shall
7 prepare an amendment that identifies the units involved, states the reallocations, is
8 executed by those unit owners, contains words of conveyance between them, and, upon
9 recordation, is indexed in the name of the grantor and the grantee.

10 **2. The association shall prepare and record plats or plans necessary to show the**
11 **altered boundaries between affected units, and their dimensions and identifying numbers.**

449.213. 1. If the declaration expressly so permits, a unit may be subdivided into
2 **two or more units. Subject to the provisions of the declaration and other provisions of law,**
3 **upon application of a unit owner to subdivide a unit, the association shall prepare, execute**
4 **and record an amendment to the declaration, including the plats and plans, subdividing**
5 **that unit.**

6 **2. The amendment to the declaration must be executed by the owner of the unit to**
7 **be subdivided, assign an identifying number to each unit created and reallocate the**
8 **allocated interests formerly allocated to the subdivided unit to the new units in any**
9 **reasonable manner prescribed by the owner of the subdivided unit.**

449.214. The existing physical boundaries of a unit or the physical boundaries of
2 **a unit reconstructed in substantial accordance with the description contained in the**
3 **original declaration are the legal boundaries rather than the boundaries derived from the**
4 **description contained regardless of vertical or lateral movement of the building, or minor**
5 **variance between those boundaries and the boundaries derived. This section does not**
6 **relieve a unit owner of liability in case of such owner's willful misconduct nor relieve a**
7 **declarant or any other person of liability for failure to adhere to the plats and plans.**

449.215. A declarant may maintain sales offices, management offices and models
2 **in units or on common elements in the planned community only if the declaration so**
3 **provides and specifies the rights of a declarant with regard to the number, size, location**
4 **and relocation thereof. Subject to any limitations in the declaration, a declarant may**
5 **maintain signs on the common elements advertising the planned community. The**
6 **provisions of this section are subject to the provisions of other state law and to local**
7 **ordinances.**

449.216. 1. Subject to the provisions of section 449.312, the unit owners have an
2 **easement:**

3 **(1) In the common elements for purposes of access to their units; and**

4 **(2) To use the common elements and all real estate which must become common**
5 **elements for all other purposes.**

6 **2. Subject to the provisions of the declaration, a declarant has an easement through**
7 **the common elements as may be reasonably necessary for the purpose of discharging a**
8 **declarant's obligations or exercising special declarant rights, whether arising pursuant to**
9 **this chapter or reserved in the declaration.**

449.217. 1. Except in cases of amendments that may be executed by a declarant
2 **pursuant to subsection 6 of section 449.209 or section 449.210; or by the association**

3 pursuant to section 449.107, subsection 4 of section 449.206, subsection 3 of section 449.208,
4 subsection 1 of section 449.212 or subsection 1 of section 449.213; or by certain unit owners
5 pursuant to subsection 2 of section 449.208, subsection 1 of section 449.212, subsection 2
6 of section 449.213, or subsection 2 of section 449.218, and except as limited by subsections
7 4, 5 and 6 of this section, the declaration, including the plats and plans, may be amended
8 only by vote or agreement of unit owners of units to which at least sixty-seven percent of
9 the votes in the association are allocated, or any larger majority the declaration specifies.
10 The declaration may specify a smaller number only if all of the units are restricted
11 exclusively to nonresidential use.

12 2. No action to challenge the validity of an amendment adopted by the association
13 pursuant to this section may be brought more than one year after the amendment is
14 recorded.

15 3. Every amendment to the declaration must be recorded in every county in which
16 any portion of the planned community is located, and is effective only upon recordation.
17 Every amendment, except an amendment pursuant to subsection 1 of section 449.212, shall
18 be indexed in the name of the planned community and the association and in the name of
19 the parties executing the amendment.

20 4. Except to the extent expressly permitted or required by other provisions of this
21 chapter, no amendment may create or increase the special declarant rights, increase the
22 number of units or change the boundaries of any unit or the allocated interests of a unit
23 in the absence of unanimous consent of the unit owners.

24 5. An amendment to the declaration may be adopted that prohibits or materially
25 restricts the permitted uses of, or behavior in, a unit or the number or other qualifications,
26 of persons who may occupy units, by vote or agreement of unit owners to which eighty
27 percent of the votes in the association are allocated; provided however, that the amendment
28 must provide reasonable protection for a valid use or occupancy existing at the time the
29 amendment was adopted.

30 6. The time limits specified in the declaration pursuant to subdivision (8) of
31 subsection 1 of section 449.205 within which reserved development rights must be exercised
32 may be extended, and additional development rights may be created, if persons entitled to
33 cast at least eighty percent of the votes in the association, including eighty percent of the
34 votes allocated to units not owned by the declarant, agree to that action. The agreement
35 is effective thirty days after an amendment to the declaration reflecting the terms of the
36 agreement is recorded, unless all persons holding the affected special declarant rights or
37 security interests in those rights:

38 (1) Record a written objection within that thirty-day period in which case the

39 amendment is void; or

40 (2) Consent in writing at the time the amendment is recorded, in which case the
41 amendment is effective when recorded.

42 7. Amendments to the declaration required by this chapter to be recorded by the
43 association shall be prepared, executed, recorded and certified on behalf of the association
44 by any officer of the association designated for that purpose or, in the absence of
45 designation, by the president of the association.

449.218. 1. Except in the case of a taking of all the units by eminent domain, a
2 planned community may be terminated only by agreement of unit owners of units to which
3 at least eighty percent of the votes in the association are allocated, or any larger percentage
4 the declaration specifies. The declaration may specify a smaller percentage only if all of
5 the units in the planned community are restricted exclusively to nonresidential uses.

6 2. An agreement to terminate must be evidenced by the execution of a termination
7 agreement, or ratifications thereof, in the same manner as a deed, by the requisite number
8 of unit owners. The termination agreement must specify a date after which the agreement
9 will be void unless it is recorded before that date. A termination agreement and all
10 ratifications thereof must be recorded in every county in which a portion of the planned
11 community is situated, and is effective only upon recordation.

12 3. In the case of a planned community containing only units having horizontal
13 boundaries described in the declaration, a termination agreement may provide that all the
14 common elements and units of the planned community shall be sold following termination.
15 If, pursuant to the agreement, any real estate in the planned community is to be sold
16 following termination, the termination agreement must set forth the minimum terms of the
17 sale.

18 4. In the case of a planned community containing any units not having horizontal
19 boundaries described in the declaration, a termination agreement may provide for sale of
20 the common elements, but may not require that the units be sold following termination,
21 unless the declaration as originally recorded provided otherwise or unless all the unit
22 owners consent to the sale.

23 5. The association, on behalf of the unit owners, may contract for the sale of real
24 estate in the planned community, but the contract is not binding until approved pursuant
25 to subsections 1 and 2 of this section. If any real estate in the planned community is to be
26 sold following termination, title to that real estate, upon termination, vests in the
27 association as trustee for the holders of all interests in the units. Thereafter, the association
28 has all powers necessary and appropriate to effect the sale. Until the sale has been
29 concluded and the proceeds thereof distributed, the association continues in existence with

30 all powers it had before termination. Proceeds of the sale must be distributed to unit
31 owners and lien holders as their interests may appear, in proportion to the respective
32 interests of unit owners as provided in subsection 8 of this section. Unless otherwise
33 specified in the termination agreement, as long as the association holds title to the real
34 estate, each unit owner and any successors in interest have an exclusive right to occupancy
35 of the portion of the real estate that formerly constituted such owner's unit. During the
36 period of that occupancy, each unit owner and any successors in interest remain liable for
37 all assessments and other obligations imposed on unit owners by this chapter or the
38 declaration.

39 6. If the real estate constituting the planned community is not to be sold following
40 termination, title to the common elements and, in a planned community containing only
41 units having horizontal boundaries described in the declaration, title to all the real estate
42 in the planned community, vests in the unit owners upon termination as tenants in common
43 in proportion to their respective interests as provided in subsection 8 of this section, and
44 liens on the units shift accordingly. While the tenancy in common exists, each unit owner
45 and any successors in interest have an exclusive right to occupancy of the portion of the
46 real estate that formerly constituted said owner's unit.

47 7. Following termination of the planned community, the proceeds of any sale of real
48 estate, together with the assets of the association, are held by the association as trustee for
49 unit owners and holders of liens on the units as their interests may appear. Following
50 termination, creditors of the association holding liens on the units which were recorded
51 before termination may enforce those liens in the same manner as any lien holder. All
52 other creditors of the association are to be treated as if they had perfected liens on the units
53 immediately before termination.

54 8. The respective interests of unit owners referred to in subsections 5, 6 and 7 of
55 this section are as follows:

56 (1) Except as provided in subdivision (2) of this subsection, the respective interests
57 of unit owners are the fair market values of their units and limited common elements
58 immediately before the termination, as determined by one or more independent appraisers
59 selected by the association. The decision of the independent appraisers shall be distributed
60 to the unit owners and becomes final unless disapproved within thirty days after
61 distribution by unit owners of units to which twenty-five percent of the votes in the
62 association are allocated. The proportion of any unit owner's interest to that of all unit
63 owners is determined by dividing the fair market value of that unit owner's unit by the
64 total fair market values of all the units and common elements;

65 (2) If any unit or any limited common element is destroyed to the extent that an

66 appraisal of the fair market value thereof before destruction cannot be made, the interests
67 of all unit owners are their respective common expense liabilities immediately before the
68 termination.

69 **9.** Except as provided in subsection 10 of this section, foreclosure or enforcement
70 of a lien or encumbrance against the entire planned community does not of itself terminate
71 the planned community, and foreclosure or enforcement of a lien or encumbrance against
72 a portion of the planned community does not of itself withdraw that portion from the
73 planned community. Foreclosure or enforcement of a lien or encumbrance against
74 withdrawable real estate does not of itself withdraw that real estate from the planned
75 community, but the person taking title thereto has the right to require from the association,
76 upon request, an amendment excluding the real estate from the planned community.

77 **10.** If a lien or encumbrance against a portion of the real estate comprising the
78 planned community has priority over the declaration, and the lien or encumbrance has not
79 been partially released, the parties foreclosing the lien or encumbrance may upon
80 foreclosure, record an instrument excluding the real estate subject to that lien or
81 encumbrance from the planned community.

449.219. The declaration may require that all or a specified number or percentage
2 of the mortgagees or beneficiaries of deeds of trust encumbering the units approve
3 specified actions of the unit owners or the association as a condition to the effectiveness of
4 those actions, but no requirement for approval may operate to:

5 **(1)** Deny or delegate control over the general administrative affairs of the
6 association by the unit owners or the executive board; or

7 **(2)** Prevent the association or the executive board from commencing, intervening
8 in, or settling any litigation or proceeding, or receiving and distributing any insurance
9 proceeds except pursuant to section 449.313.

449.220. 1. If the declaration for a planned community provides that any of the
2 powers described in section 449.302 are to be exercised by or may be delegated to a profit
3 or nonprofit corporation or unincorporated association which exercises those or other
4 powers on behalf of one or more other planned communities or for the benefit of the unit
5 owners of one or more other planned communities, all provisions of this chapter applicable
6 to unit owners' associations apply to any such corporation or unincorporated association,
7 except as modified by this section.

8 **2.** Unless a master association is acting in the capacity of an association described
9 in section 449.301, it may exercise the powers set forth in subdivision (2) of subsection 1 of
10 section 449.302 only to the extent expressly permitted in the declarations of the planned
11 communities which are part of the master association or expressly described in the

12 delegations of power from those planned communities to the master association.

13 **3. If the declaration of any planned community provides that the executive board**
14 **may delegate certain powers to a master association, the members of the executive board**
15 **have no liability for the acts or omissions of the master association with respect to those**
16 **powers following delegation.**

17 **4. The rights and responsibilities of unit owners with respect to the unit owners'**
18 **association set forth in sections 449.303, 449.308, 449.309, 449.310 and 449.312 apply in the**
19 **conduct of the affairs of a master association only to those persons who elect the board of**
20 **a master association, whether or not those persons are otherwise unit owners within the**
21 **meaning of this chapter.**

22 **5. Even if a master association is also an association described in section 449.301,**
23 **the certificate of incorporation or other instrument creating the master association and the**
24 **declaration of each planned community the powers of which are assigned by the**
25 **declaration or delegated to the master association may provide that the executive board of**
26 **the master association must be elected after the period of declarant control in any of the**
27 **following ways:**

28 **(1) All unit owners of all planned communities subject to the master association**
29 **may elect all members of the master association's executive board;**

30 **(2) All members of the executive boards of all planned communities subject to the**
31 **master association may elect all members of the master association's executive board;**

32 **(3) All unit owners of each planned community subject to the master association**
33 **may elect specified members of the master association's executive board;**

34 **(4) All members of the executive board of each planned community subject to the**
35 **master association may elect specified members of the master association's executive board.**

449.221. 1. Any two or more planned communities, by agreement of the unit
2 **owners as provided in subsection 2 of this section, may be merged or consolidated into a**
3 **single planned community. In the event of a merger or consolidation, unless the agreement**
4 **otherwise provides, the resultant planned community is, for all purposes, the legal**
5 **successor of all of the preexisting planned communities, and the operations and activities**
6 **of all associations of the preexisting planned communities shall be merged or consolidated**
7 **into a single association which shall hold all powers, rights, obligations, assets and**
8 **liabilities of all preexisting associations.**

9 **2. An agreement of two or more planned communities to merge or consolidate**
10 **pursuant to subsection 1 of this section must be evidenced by an agreement prepared,**
11 **executed, recorded and certified by the president of the association of each of the**
12 **preexisting planned communities following approval by owners of units to which are**

13 allocated the percentage of votes in each planned community required to terminate that
14 planned community. Any such agreement must be recorded in every county in which a
15 portion of the planned community is located and is not effective until recorded.

16 3. Every merger or consolidation agreement must provide for the reallocation of
17 the allocated interests in the new association among the units of the resultant planned
18 community either:

19 (1) By stating the reallocations or the formulas upon which they are based; or

20 (2) By stating the percentage of overall common expense liabilities and votes in the
21 new association which are allocated to all of the units comprising each of the preexisting
22 planned communities, and providing that the portion of the percentages allocated to each
23 unit formerly comprising a part of the preexisting planned community must be equal to
24 the percentages of common expense liabilities and votes in the association allocated to that
25 unit by the declaration of the preexisting planned community.

449.222. If the right is originally reserved in the declaration, the declarant may, in
2 addition to any other development right, amend the declaration at any time during as
3 many years as are specified in the declaration to add additional real estate to the planned
4 community without describing the location of that real estate in the original declaration;
5 provided, that the amount of real estate added to the planned community pursuant to this
6 section may not exceed ten percent of the real estate described in subdivision (3) of
7 subsection 1 of section 449.205, and provided further, that the declarant may not in any
8 event increase the number of units in the planned community beyond the number stated
9 in the original declaration pursuant to subdivision (5) of subsection 1 of section 449.205.

449.223. 1. The declaration for a planned community may state that it is a master
2 planned community if the declarant has reserved the development right to create at least
3 five hundred units that may be used for residential purposes and, at the time of the
4 reservation, that declarant owns or controls more than five hundred acres on which the
5 units may be built.

6 2. If the requirements of subsection 1 of this section are satisfied, the declaration
7 for the master planned community need not state a maximum number of units and need
8 not contain any of the information required by subdivisions (3) to (14) of subsection 1 of
9 section 449.205 until the declaration is amended pursuant to subsection 3 of this section.

10 3. At the time each unit in a master planned community is conveyed to a purchaser,
11 the declaration shall contain:

12 (1) A sufficient legal description of the unit and all portions of the master planned
13 community in which any other units have been conveyed to a purchaser; and

14 (2) All the information required by subdivisions (3) to (14) of subsection 1 of section

15 **449.205** with respect to that real estate.

16 **4. Notwithstanding any other provision of the chapter:**

17 **(1) The only real estate in a master planned community which is subject to the**
18 **chapter is:**

19 **(a) Units that have been declared or which are being offered for sale; and**

20 **(b) Any other real estate described pursuant to subsection 3 of this section;**

21 **(2) Other real estate that is or may become part of the master planned community**
22 **is only subject to other law and to any other restrictions and limitations that appear of**
23 **record; and**

24 **(3) If the original sale certificate conspicuously identifies the fact that the**
25 **community is a master planned community, the disclosure requirements contained in**
26 **sections 449.401 to 449.407 apply only with respect to units that have been declared or are**
27 **being offered for sale in connection with the original sale certificate and to the real estate**
28 **described pursuant to subsection 3 of this section.**

29 **5. The limitations contained in section 449.222 do not apply to a master planned**
30 **community.**

31 **6. Subject to the requirements of good faith in section 449.113 and**
32 **unconscionability in section 449.112, the period of declarant control of the association for**
33 **a master planned community terminates in accordance with any conditions specified in the**
34 **declaration or otherwise at the time of the declarant, in a recorded instrument and after**
35 **giving written notice to all the unit owners, voluntarily surrenders all rights to control the**
36 **activities of the associations.**

449.301. A unit owners' association must be organized no later than the date the
2 **first unit in the planned community is conveyed. The membership of the association at all**
3 **times shall consist exclusively of all the unit owners or, following termination of the**
4 **planned community, of all unit owners entitled to distributions of proceeds pursuant to**
5 **section 449.218 or their heirs, successors or assigns. The association shall be organized as**
6 **a profit or nonprofit corporation.**

449.302. 1. Except as provided in subsection 2 of this section, and subject to the
2 **provisions of the declaration, the association may:**

3 **(1) Adopt and amend bylaws and rules and regulations for the planned community**
4 **and those who own or lease units within it;**

5 **(2) Adopt and amend budgets for revenues, expenditures and reserves and collect**
6 **assessments for common expenses from unit owners;**

7 **(3) Hire and discharge managing agents and other employees, agents and**
8 **independent contractors;**

- 9 (4) Institute, defend or intervene in litigation or administrative proceedings in its
10 own name on behalf of itself or two or more unit owners on matters affecting the planned
11 community;
- 12 (5) Make contracts and incur liabilities;
- 13 (6) Regulate the use, maintenance, repair, replacement and modification of
14 common elements;
- 15 (7) Cause additional improvements to be made as a part of the common elements;
- 16 (8) Acquire, hold, encumber and convey in its own name any right, title or interest
17 to real or personal property, but common elements may be conveyed or subjected to a
18 security interest only pursuant to section 449.312;
- 19 (9) Grant easements, leases, licenses and concessions through or over the common
20 elements;
- 21 (10) Impose and receive any payments, fees or charges for the use, rental or
22 operation of the common elements, other than the limited common elements described in
23 subdivisions (2) and (4) of section 449.202, and for services provided to unit owners;
- 24 (11) Impose:
- 25 (a) Charges for late payment of assessments; and
- 26 (b) After notice and an opportunity to be heard, levy reasonable fines for violations
27 of the declaration, bylaws and rules and regulations of the association;
- 28 (12) Impose reasonable charges for the preparation and recordation of
29 amendments to the declaration, resale certificates required by section 449.409, or
30 statements of unpaid assessments;
- 31 (13) Provide for the indemnification of its officers and executive board and
32 maintain directors' and officers' liability insurance;
- 33 (14) Assign its right to future income, including the right to receive common
34 expense assessments, subject to the limitations expressly provided in the declaration;
- 35 (15) Exercise any other powers conferred by the declaration or bylaws;
- 36 (16) Exercise all other powers that may be exercised in this state by legal entities
37 of the same type as the association; and
- 38 (17) Exercise any other powers necessary and proper for the governance and
39 operation of the association.
- 40 2. The declaration may not impose limitations on the power of the association to
41 deal with a declarant which are more restrictive than the limitations imposed on the power
42 of the association to deal with other persons.
- 43 3. The association may adopt rules with respect to units that may be used for
44 residential purposes to:

45 (1) By regulation, require that disputes between the executive board and unit
46 owners or between two or more unit owners regarding the planned community must be
47 submitted to nonbinding alternative dispute resolution in the manner described in the
48 regulations as a prerequisite to instituting a judicial proceeding;

49 (2) Prevent any use of, or behavior in, residential units which violates the
50 declaration or adversely affects the use and enjoyment of other units or the common
51 elements by other unit owners; or

52 (3) Reasonably restrict the leasing of residential units so long as the rules are
53 designed to meet the current underwriting requirements adopted by institutional lenders
54 who regularly lend money secured by first mortgages on units in common interest
55 communities or regularly purchase those mortgages.

56

57 Otherwise, the association may not regulate the use of, or behavior in, units unless
58 empowered to do so by the declaration or this chapter.

 449.303. 1. Except as provided in the declaration, the bylaws, subsection 2 of this
2 section, or other provisions of this chapter, the executive board may act in all instances on
3 behalf of the association. In the performance of their duties, officers and members of the
4 executive board appointed by the declarant are required to exercise the care required of
5 a trustee for the unit owners. Otherwise, officers and members of the executive board shall
6 exercise reasonable care.

7 2. The executive board may not act on behalf of the association to amend the
8 declaration, to terminate the planned community, or to elect members of the executive
9 board or determine the qualifications, powers and duties, or terms of office of executive
10 board members, but the executive board may fill vacancies in its membership for the
11 unexpired portion of any term.

12 3. Within thirty days after adoption of any proposed budget for the planned
13 community, the executive board shall provide a summary of the budget to all the unit
14 owners, and shall set a date for a meeting of the unit owners to consider ratification of the
15 budget not less than fourteen nor more than thirty days after mailing of the summary.
16 Unless at that meeting a majority of all the unit owners or any larger vote specified in the
17 declaration reject the budget, the budget is ratified, whether or not a quorum is present.
18 In the event the proposed budget is rejected, the periodic budget last ratified by the unit
19 owners shall be continued until such time as the unit owners ratify a subsequent budget
20 proposed by the executive board.

21 4. Subject to subsection 5 of this section, the declaration may provide for a period
22 of declarant control of the association, during which period a declarant, or persons

23 designated by him, may appoint and remove the officers and members of the executive
24 board. Regardless of the period provided in the declaration, a period of declarant control
25 terminates no later than the earlier of:

26 (1) Sixty days after conveyance of seventy-five percent of the units which may be
27 created to unit owners other than a declarant;

28 (2) Two years after all declarants have ceased to offer units for sale in the ordinary
29 course of business; or

30 (3) Two years after any development right to add new units was last exercised.

31

32 A declarant may voluntarily surrender the right to appoint and remove officers and
33 members of the executive board before termination of that period, but in that event the
34 declarant may require, for the duration of the period of declarant control, that specified
35 actions of the association or executive board, as described in a recorded instrument
36 executed by the declarant, be approved by the declarant before they become effective.

37 5. Not later than sixty days after conveyance of twenty-five percent of the units
38 which may be created to unit owners other than a declarant, at least one member and not
39 less than twenty-five percent of the members of the executive board must be elected by unit
40 owners other than the declarant. Not later than sixty days after conveyance of fifty percent
41 of the units which may be created to unit owners other than a declarant, not less than
42 thirty-three and one-third percent of the members of the executive board must be elected
43 by unit owners other than the declarant.

44 6. Not later than the termination of any period of declarant control, the unit owners
45 shall elect an executive board of at least three members, at least a majority of whom must
46 be unit owners. The executive board shall elect the officers. The executive board members
47 and officers shall take office upon election.

48 7. Notwithstanding any provision of the declaration or bylaws to the contrary, the
49 unit owners, by a two-thirds vote of all persons present and entitled to vote at any meeting
50 of the unit owners at which a quorum is present, may remove any member of the executive
51 board with or without cause, other than a member appointed by the declarant.

52 8. On or before the date of termination of declarant control, the declarant shall
53 relinquish control of the planned community and the unit owners shall accept control. At
54 the same time, the declarant shall deliver to the planned community all property, books,
55 accounts and articles of incorporation of the association and of the planned community
56 held or controlled by the declarant from the date the association was organized.

449.304. 1. No special declarant right created or reserved pursuant to this chapter
2 may be transferred except by an instrument evidencing the transfer recorded in every

3 county in which any portion of the planned community is located. The instrument is not
4 effective unless executed by the transferee.

5 2. Upon transfer of any special declarant right, the liability of a transferor
6 declarant is as follows:

7 (1) A transferor is not relieved of any obligation or liability arising before the
8 transfer, and remains liable for warranty obligations imposed by this chapter. Lack of
9 privity does not deprive any unit owner of standing to maintain an action to enforce any
10 obligation of the transferor;

11 (2) If a successor to any special declarant right is an affiliate of a declarant, the
12 transferor is jointly and severally liable with the successor for any obligations or liabilities
13 of the successor relating to the planned community;

14 (3) If a transferor retains any special declarant rights, but transfers other special
15 declarant rights to a successor who is not an affiliate of the declarant, the transferor is
16 liable for any obligations or liabilities imposed on a declarant by this chapter or by the
17 declaration relating to the retained special declarant rights and arising after the transfer;

18 (4) A transferor has no liability for any act or omission or any breach of a
19 contractual or warranty obligation arising from the exercise of a special declarant right by
20 a successor declarant who is not an affiliate of the transferor.

21 3. Unless otherwise provided in a mortgage instrument, deed of trust or other
22 agreement creating a security interest, in case of foreclosure of a security interest, sale by
23 a trustee pursuant to an agreement creating a security interest, tax sale, judicial sale or sale
24 under bankruptcy code or receivership proceedings, of any units owned by a declarant or
25 real estate in a planned community subject to development rights, a person acquiring title
26 to all the property being foreclosed or sold, but only upon such person's request, succeeds
27 to all special declarant rights related to that property held by that declarant, or only to any
28 rights reserved in the declaration pursuant to section 449.215 and held by that declarant
29 to maintain models, sales offices and signs. The judgment or instrument conveying title
30 shall provide for transfer of only the special declarant rights requested.

31 4. Upon foreclosure of a security interest, sale by a trustee pursuant to an
32 agreement creating a security interest, tax sale, judicial sale or sale under bankruptcy code
33 or receivership proceedings, of all interests in a planned community owned by a declarant:

34 (1) The declarant ceases to have any special declarant rights; and

35 (2) The period of declarant control terminates unless the judgment or instrument
36 conveying title provides for transfer of all special declarant rights held by that declarant
37 to a successor declarant.

38 5. The liabilities and obligations of a person who succeeds to special declarant

39 rights are as follows:

40 (1) A successor to any special declarant right who is an affiliate of a declarant is
41 subject to all obligations and liabilities imposed on the transferor by this chapter or by the
42 declaration;

43 (2) A successor to any special declarant right, other than a successor described in
44 subdivision (3) or (4) of this subsection, who is not an affiliate of a declarant, is subject to
45 all obligations and liabilities imposed by this chapter or the declaration:

46 (a) On a declarant which relate to the successor's exercise or nonexercise of special
47 declarant rights; or

48 (b) On the declarant's transferor, other than:

49 a. Misrepresentations by any previous declarant;

50 b. Warranty obligations on improvements made by any previous declarant, or
51 made before the planned community was created;

52 c. Breach of any fiduciary obligation by any previous declarant or the previous
53 declarant's appointees to the executive board; or

54 d. Any liability or obligation imposed on the transferor as a result of the
55 transferor's acts or omissions after the transfer;

56 (3) A successor to only a right reserved in the declaration to maintain models, sales
57 offices and signs, may not exercise any other special declarant right, and is not subject to
58 any liability or obligation as a declarant, except the obligation to provide an original sale
59 certificate and any liability arising as a result thereof; and

60 (4) A successor to all special declarant rights held by the successor's transferor who
61 succeeded to those rights pursuant to a deed or other instrument of conveyance in lieu of
62 foreclosure or a judgment or instrument conveying title pursuant to subsection 3 of this
63 section may declare such successor's intention in a recorded instrument to hold those rights
64 solely for transfer to another person. Thereafter, until transferring all special declarant
65 rights to any person acquiring title to any unit or real estate subject to development rights
66 owned by the successor, or until recording an instrument permitting exercise of all those
67 rights, that successor may not exercise any of those rights other than any right held by the
68 successor's transferor to control the executive board in accordance with the provisions of
69 subsection 4 of section 449.303 for the duration of any period of declarant control, and any
70 attempted exercise of those rights is void. So long as a successor declarant may not exercise
71 special declarant rights pursuant to this subsection, the successor declarant is not subject
72 to any liability or obligation as a declarant other than liability for the successor declarant's
73 acts and omissions pursuant to subsection 4 of section 449.303.

74 5. Nothing in this section subjects any successor to a special declarant right to any

75 claims against or other obligations of a transferor declarant, other than claims and
76 obligations arising pursuant to this chapter or the declaration.

449.305. Except for a planned community consisting exclusively of nonresidential
2 units, if entered into before the executive board elected by the unit owners pursuant to
3 subsection 5 of section 449.303 takes office:

4 (1) Any management contract, employment contract or lease of recreational or
5 parking areas or facilities;

6 (2) Any other contract or lease between the association and a declarant or an
7 affiliate of a declarant; or

8 (3) Any contract or lease that is not bona fide or was unconscionable to the unit
9 owners at the time entered into under the circumstances then prevailing.

10

11 May be terminated without penalty by the association at any time after the executive board
12 elected by the unit owners pursuant to subsection 5 of section 449.303 takes office upon not
13 less than ninety days' notice to the other party. This section does not apply to any lease,
14 the termination of which would terminate the planned community or reduce its size, unless
15 the real estate subject to that lease was included in the planned community for the purpose
16 of avoiding the right of the association to terminate a lease pursuant to this section.

449.306. 1. The bylaws of the association must provide for:

2 (1) The number of members of the executive board and the titles of the officers of
3 the association;

4 (2) Election by the executive board of a president, treasurer, secretary and any
5 other officers of the association the bylaws specify;

6 (3) The qualifications, powers and duties, terms of office, and manner of electing
7 and removing executive board members and officers and filling vacancies;

8 (4) Which, if any, of its powers the executive board or officers may delegate to other
9 persons or to a managing agent;

10 (5) Which of its officers may prepare, execute, certify and record amendments to
11 the declaration on behalf of the association; and

12 (6) The method of amending the bylaws by vote or agreement of unit owners to
13 which at least a majority of the votes in the association are allocated.

14 2. Subject to the provisions of the declaration, the bylaws may provide for any
15 other matters the association deems necessary and appropriate.

449.307. 1. Except to the extent provided by the declaration, subsection 2 of this
2 section, or subsection 8 of section 449.313, the association is responsible for maintenance,
3 repair and replacement of the common elements, and each unit owner is responsible for

4 maintenance, repair and replacement of the owner's unit. Each unit owner shall afford
5 to the association and the other unit owners, and to their agents or employees, access
6 through the owner's unit reasonably necessary for those purposes. If damage is inflicted
7 on the common elements, or on any unit through which access is taken, the unit owner
8 responsible for the damage, or the association if it is responsible, is liable for the prompt
9 repair thereof.

10 2. In addition to the liability that a declarant has pursuant to this chapter as a unit
11 owner, the declarant alone is liable for all expenses in connection with real estate subject
12 to development rights. No other unit owner and no other portion of the planned
13 community is subject to a claim for payment of those expenses. Unless the declaration
14 provides otherwise, any income or proceeds from real estate subject to development rights
15 inures to the declarant. In the event all development rights have expired with respect to
16 any real estate, the declarant remains liable for all expenses of that real estate unless, upon
17 expiration, the declaration provides that such real estate becomes common elements or
18 units.

 449.308. A meeting of the association must be held at least once each year. Special
2 meetings of the association may be called by the president, a majority of the executive
3 board or by unit owners having twenty percent, or any lower percentage specified in the
4 bylaws, of the votes in the association. Not less than ten nor more than sixty days in
5 advance of any meeting, the secretary or other officer specified in the bylaws shall cause
6 notice to be hand-delivered or sent prepaid by United States mail to the mailing address
7 of each unit or to any other mailing address designated in writing by the unit owner. The
8 notice of any meeting must state the time and place of the meeting and the items on the
9 agenda, including the general nature of any proposed amendment to the declaration or
10 bylaws, any budget changes, and any proposal to remove a director or officer.

 449.309. 1. Unless the bylaws provide otherwise, a quorum is present throughout
2 any meeting of the association if persons entitled to cast twenty percent of the votes which
3 may be cast for election of the executive board are present in person or by proxy at the
4 beginning of the meeting.

5 2. Unless the bylaws specify a larger percentage, a quorum is deemed present
6 throughout any meeting of the executive board if persons entitled to cast fifty percent of
7 the votes on that board are present at the beginning of the meeting.

 449.310. 1. If only one of the multiple owners of a unit is present at a meeting of
2 the association, such multiple owner is entitled to cast all the votes allocated to that unit.
3 If more than one of the multiple owners are present, the votes allocated to that unit may
4 be cast only in accordance with the agreement of a majority in interest of the multiple

5 owners, unless the declaration expressly provides otherwise. There is majority agreement
6 if any one of the multiple owners casts the votes allocated to that unit without protest being
7 made promptly to the person presiding over the meeting by any of the other owners of the
8 unit.

9 2. Votes allocated to a unit may be cast pursuant to a proxy or mail ballot duly
10 executed by a unit owner. If a unit is owned by more than one person, each owner of the
11 unit may vote or register protest to the casting of votes by the other owners of the unit
12 through a duly executed proxy or mail ballot. A unit owner may not revoke a proxy or
13 mail ballot given pursuant to this section except by actual notice of revocation to the person
14 presiding over a meeting of the association. A proxy is void if it is not dated or purports
15 to be revocable without notice. A proxy terminates one year after its date, unless it
16 specifies a shorter term.

17 3. If the declaration requires that votes on specified matters affecting the planned
18 community be cast by lessees rather than unit owners of leased units:

19 (1) The provisions of subsections 1 and 2 of this section apply to lessees as if they
20 were unit owners;

21 (2) Unit owners who have leased their units to other persons may not cast votes on
22 those specified matters; and

23 (3) Lessees are entitled to notice of meetings, access to records, and other rights
24 respecting those matters as if they were unit owners. Unit owners must also be given
25 notice, in the manner provided in section 449.308, of all meetings at which lessees may be
26 entitled to vote.

27 4. No votes allocated to a unit owned by an owner who is delinquent in the payment
28 of assessments may be cast, and no such unit shall be counted for the purpose of
29 determining the presence of a quorum at any meeting of the association.

449.311. 1. No unit owner is liable for an injury or damage arising out of the
2 condition or use of the common elements, except to the extent of such unit owner's
3 negligent act or omission. Neither the association nor any unit owner except the declarant
4 is liable for that declarant's torts in connection with any part of the planned community
5 which that declarant has the responsibility to maintain.

6 2. An action alleging a wrong done by the association, including an action arising
7 out of the conditions or use of the common elements, may be maintained against the
8 association and not against any unit owner. If the wrong occurred during any period of
9 declarant control and the association gives the declarant reasonable notice of and an
10 opportunity to defend against the action, the declarant who then controlled the association
11 is liable to the association or to any unit owner:

12 (1) For all tort losses not covered by insurance suffered by the association or that
13 unit owner; and

14 (2) For all costs which the association would not have incurred but for a breach of
15 contract or other wrongful act or omission.

16

17 Whenever the declarant is liable to the association pursuant to this section, the declarant
18 is also liable for all litigation expenses, including reasonable attorney's fees, incurred by
19 the association. Any statute of limitation affecting the association's right of action
20 pursuant to this section is tolled until the period of declarant control terminates. A unit
21 owner is not precluded from bringing an action contemplated by this section because the
22 unit owner is a unit owner or a member or officer of the association. Liens resulting from
23 judgments against the association are governed by section 449.317.

24 3. A unit owner shall be liable for any claim, damage or judgment entered as a
25 result of the use or operation of the unit owner's unit, or caused by the unit owner's own
26 conduct.

27 4. Notwithstanding the provisions of subsection 1 of section 449.303, no member
28 of the executive board or officer of a planned community, who serves without
29 compensation other than reimbursement for actual expenses incurred, is liable to any
30 person including a unit owner for tort losses resulting from the exercise of judgment or
31 discretion in connection with governing or operating the planned interest community,
32 unless the act or omission involves conduct that is actually or deliberately intended to cause
33 harm or which shows an utter indifference to or conscious disregard for the safety of
34 others or their property.

 449.312. 1. Portions of the common elements may be conveyed or subjected to a
2 security interest by the association if persons entitled to cast at least eighty percent of the
3 votes in the association, including eighty percent of the votes allocated to units not owned
4 by a declarant, or any larger percentage the declaration specifies, agree to that action; but
5 all the owners of units to which any limited common element is allocated must agree in
6 order to convey that limited common element or subject it to a security interest. The
7 declaration may specify a smaller percentage only if all the units are restricted exclusively
8 to nonresidential uses. Proceeds of the sale are an asset of the association, but the proceeds
9 of the sale of limited common elements shall be distributed equitably among the owners of
10 units to which the limited common elements were allocated.

11 2. An agreement to convey common elements or subject them to a security interest
12 must be evidenced by the execution of an agreement, or ratifications thereof, in the same
13 manner as a deed, by the requisite number of unit owners. The agreement must specify

14 a date after which the agreement will be void unless recorded before that date. The
15 agreement and all ratifications thereof must be recorded in every county in which a portion
16 of the planned community is situated, and is effective only upon recordation.

17 3. The association, on behalf of the unit owners, may contract to convey an interest
18 in a planned community pursuant to subsection 1 of this section, but the contract is not
19 enforceable against the association until approved pursuant to subsections 1 and 2 of this
20 section. Thereafter, the association has all powers necessary and appropriate to effect the
21 conveyance or encumbrance, including the power to execute deeds or other instruments.

22 4. Any purported conveyance, encumbrance, judicial sale or other involuntary
23 transfer of common elements, unless made pursuant to this section is void.

24 5. A conveyance or encumbrance of common elements pursuant to this section does
25 not deprive any unit of its rights of access and support.

449.313. 1. Commencing not later than the time of the first conveyance of a unit
2 to a person other than a declarant, the association shall maintain, to the extent reasonably
3 available:

4 (1) Property insurance on the common elements and on property which must
5 become common elements, insuring against all risks of direct physical loss commonly
6 insured against, in the case of a conversion building, against fire and extended coverage
7 perils. The total amount of insurance after application of any deductibles shall be not less
8 than eighty percent of the actual cash value of the insured property at the time the
9 insurance is purchased and at each renewal date, exclusive of land, excavations,
10 foundations and other items normally excluded from property policies; and

11 (2) Commercial general liability insurance against claims and liabilities arising in
12 connection with the ownership, existence, use or management of the property an amount,
13 if any, specified by the planned community instruments or otherwise deemed sufficient in
14 the judgment of the executive board, insuring the executive board, the unit owners'
15 association, the management agent and their respective employees, agents and all persons
16 acting as agents. The declarant shall be included as an additional insured in the capacity
17 of unit owner and board member. The unit owners shall be included as additional insureds
18 but only for claims and liabilities arising in connection with the ownership, existence, use
19 or management of the common elements. The insurance shall cover claims of one or more
20 insured parties against other insured parties.

21 2. In the case of a building containing units having horizontal boundaries described
22 in the declaration, the insurance maintained pursuant to subdivision (1) of subsection 1 of
23 this section, to the extent reasonably available, shall include the units, but need not include
24 improvements and betterments installed by unit owners, but if they are covered, any

25 increased charge shall be assessed by the association to those owners.

26 **3. If the insurance described in subsections 1 and 2 of this section is not reasonably**
27 **available, the association promptly shall cause notice of that fact to be hand-delivered or**
28 **sent prepaid by United States mail to all unit owners. The declaration may require the**
29 **association to carry any other insurance, and the association in any event may carry any**
30 **other insurance it deems appropriate to protect the association or the unit owners.**

31 **4. Insurance policies carried pursuant to subsections 1 and 2 of this section must**
32 **provide that:**

33 **(1) Each unit owner is an insured person under the policy with respect to liability**
34 **arising out of the unit owner's interest in the common elements or membership in the**
35 **association;**

36 **(2) The insurer waives its right to subrogation under the policy against any unit**
37 **owner or member of the unit owner's household;**

38 **(3) No act or omission by any unit owner, unless acting within the scope of the unit**
39 **owner's authority on behalf of the association, will void the policy or be a condition to**
40 **recovery under the policy; and**

41 **(4) If, at the time of a loss under the policy, there is other insurance in the name of**
42 **a unit owner covering the same risk covered by the policy, the association's policy provides**
43 **primary insurance.**

44 **5. Any loss covered by the property policy pursuant to subdivision (1) of subsection**
45 **1 of this section and pursuant to subsection 2 of this section must be adjusted with the**
46 **association, but the insurance proceeds for that loss are payable to any insurance trustee**
47 **designated for that purpose, or otherwise to the association, and not to any holder of a**
48 **security interest. The insurance trustee or the association shall hold any insurance**
49 **proceeds in trust for the association unit owners and lienholders as their interests may**
50 **appear. Subject to the provisions of subsection 7 of this section, the proceeds must be**
51 **disbursed first for the repair or restoration of the damaged property, and the association**
52 **unit owners and lien holders are not entitled to receive payment of any portion of the**
53 **proceeds unless there is a surplus of proceeds after the property has been completely**
54 **repaired or restored, or the planned community is terminated.**

55 **6. An insurance policy issued to the association does not prevent a unit owner from**
56 **obtaining insurance for the unit owner's own benefit.**

57 **7. An insurer that has issued an insurance policy pursuant to this section shall issue**
58 **certificates or memoranda of insurance to the association and, upon written request, to any**
59 **unit owner or holder of a security interest. The insurer issuing the policy may not cancel**
60 **or refuse to renew it until thirty days after notice of the proposed cancellation or**

61 nonrenewal has been mailed to the association, each unit owner and holder of a security
62 interest whom a certificate or memorandum of insurance have been issued at their
63 respective last known addresses.

64 **8. Any portion of the planned community for which insurance is required pursuant**
65 **to this section which is damaged or destroyed shall be repaired or replaced promptly by**
66 **the association unless:**

67 **(1) The planned community is terminated, in which case section 449.210 applies;**

68 **(2) Repair or replacement would be illegal pursuant to any state or local ordinance**
69 **governing health or safety; or**

70 **(3) Eighty percent of the unit owners, including every owner of a unit or assigned**
71 **limited common element which will not be rebuilt, vote not to rebuild.**

72 **9. The cost of repair or replacement in excess of insurance proceeds and reserves**
73 **is a common expense.**

74 **10. If the entire planned community is not repaired or replaced:**

75 **(1) The insurance proceeds attributable to the damaged common elements must be**
76 **used to restore the damaged area to a condition compatible with the remainder of the**
77 **planned community;**

78 **(2) The insurance proceeds attributable to units and limited common elements**
79 **which are not rebuilt must be distributed to the owners of those units and the owners of**
80 **the units to which those limited common elements were allocated, or to lienholders, as their**
81 **interests may appear; and**

82 **(3) The remainder of the proceeds must be distributed to all the unit owners or**
83 **lienholders, as their interests may appear, in proportion to the common expense liabilities**
84 **of all the units.**

85 **11. If the unit owners vote not to rebuild any unit, that unit's allocated interests are**
86 **automatically reallocated upon the vote as if the unit had been condemned pursuant to**
87 **subsection 1 of section 449.107, and the association promptly shall prepare, execute and**
88 **record an amendment to the declaration reflecting the reallocations.**

89 **12. The provisions of this section may be varied or waived in the case of a planned**
90 **community all of whose units are restricted to nonresidential use.**

449.314. Unless otherwise provided in the declaration, any surplus funds of the
2 **association remaining after payment of or provision for common expenses and any**
3 **prepayment of reserves must be paid to the unit owners in proportion to their common**
4 **expense liabilities or credited to them to reduce their future common expense assessments.**

449.315. 1. Until the association makes a common expense assessment, the
2 **declarant shall pay all common expenses. After any assessment has been made by the**

3 association, assessments must be made at least annually, based on a budget adopted at least
4 annually by the association.

5 2. Except for assessments pursuant to subsections 3, 4 and 5 of this section, all
6 common expenses must be assessed against all the units in accordance with the allocation
7 set forth in the declaration pursuant to subsection 1 of section 449.207. Any past due
8 common expense assessment or instalment thereof bears interest at the rate established by
9 the association not exceeding eighteen percent per year.

10 3. To the extent required by the declaration:

11 (1) Any common expense associated with the maintenance, repair or replacement
12 of a limited common element must be assessed against the units to which that limited
13 common element is assigned, equally, or in any other proportion that the declaration
14 provides;

15 (2) Any common expense or portion thereof benefiting fewer than all of the units
16 must be assessed exclusively against the units benefited; and

17 (3) The costs of insurance must be assessed in proportion to risk and the costs of
18 utilities must be assessed in proportion to usage.

19 4. Assessments to pay a judgment against the association may be made only against
20 the units in the planned community at the time the judgment was entered, in proportion
21 to their common expense liabilities.

22 5. If any common expense is caused by the misconduct of any unit owner, the
23 association may assess that expense exclusively against such unit owner's unit.

24 6. If common expense liabilities are reallocated, common expense assessments and
25 any installment thereof not yet due shall be recalculated in accordance with the reallocated
26 common expense liabilities.

27 7. The purchaser of a unit in a planned community at a judicial foreclosure sale,
28 or a mortgagee who receives title to a unit by deed in lieu of foreclosure or judgment by
29 foreclosure or otherwise takes possession pursuant to court order pursuant to chapter 443,
30 RSMo, shall have the duty to pay the unit owner's proportionate share of the common
31 expenses for the unit assessed from and after the first day of the month after the date of the
32 judicial foreclosure sale, delivery of the deed in lieu of foreclosure, entry of a judgment in
33 foreclosure, or taking of possession pursuant to such court order.

449.316. 1. The association has a statutory lien on a unit for any assessment levied
2 against that unit for fines imposed against its unit owner from the time the assessment or
3 fine becomes due. The association's lien may be foreclosed in like manner as a mortgage
4 on real estate or a power of sale pursuant to chapter 443, RSMo. Unless the declaration
5 otherwise provides, fees, charges, late charges, fines and interest charged pursuant to

6 subdivisions (10), (11) and (12) of subsection 1 of section 449.302 are enforceable as
7 assessments pursuant to this section. If an assessment is payable in installments, the lien
8 is for the full amount of the assessment from the time the first installment thereof becomes
9 due, together with such annual assessments as may become payable in the future. No unit
10 owner may exempt such unit owner from liability for payment of any assessment levied
11 against the unit owner's unit by waiver of the use or enjoyment of any of the common
12 elements or facilities or by abandonment of the unit or otherwise, and no unit owner shall
13 be entitled to an offset, deduction or waiver of assessments or other charges levied and
14 lawfully assessed by the association.

15 2. A lien pursuant to this section is prior to all other liens and encumbrances on a
16 unit except:

17 (1) Liens and encumbrances recorded before the recordation of the declaration;

18 (2) A first security interest or refinancing thereof on the unit recorded before the
19 date on which the assessment sought to be enforced became delinquent; and

20 (3) Liens for real estate taxes and other governmental assessments or charges
21 against the unit. This lien is also prior to a security interest described in subdivision (2)
22 of this subsection to the extent of the common expense assessments based on the periodic
23 budget adopted by the association pursuant to subsection 1 of section 449.315 which would
24 have to become due in the absence of acceleration during the six months immediately
25 preceding institution of an action to enforce the lien or collect the debt; provided that the
26 association shall not be entitled to this lien priority if it exercises its right to foreclose the
27 lien as provided in subsection 1 of this section. In addition to the lien priority of this
28 subdivision, the association shall be entitled to any costs and reasonable attorney's fees
29 incurred in the collection of the unpaid assessment provided by the association, when any
30 portion of the assessment or installment thereof has been delinquent for at least sixty days
31 subsequent to the effective date of this chapter, the association sends a notice by return
32 receipt mail, stating the amount of the delinquency, to the unit owner and the holder of a
33 first security interest, provided that such holder has informed the association of its name
34 and mailing address; and at least thirty days prior to initiating a proceeding to enforce the
35 association's lien pursuant to subsection 1 of this section, the association shall send a notice
36 by return receipt mail, stating its intention to file such action, to the holder of a first
37 security interest, provided that the holder has informed the association of its name and
38 mailing address.

39

40 This subsection does not affect the priority of mechanic's or materialmen's liens, or the
41 priority of liens for other assessments made by the association. The lien pursuant to this

42 section is not subject to the provisions of section 513.475, RSMo.

43 **3. Unless the declaration otherwise provides, if two or more associations have liens**
44 **for assessments created at any time on the same real estate, those liens have equal priority.**

45 **4. Recording of the declaration constitutes record notice and perfection of the lien.**
46 **No further recordation of any claim of lien for assessment pursuant to this section is**
47 **required.**

48 **5. A lien for unpaid assessments is extinguished unless proceedings to enforce the**
49 **lien are instituted within three years after the full amount of the assessments becomes due.**

50 **6. This section does not prohibit actions to recover sums for which subsection 1 of**
51 **this section creates a lien, or prohibit an association from taking a deed in lieu of**
52 **foreclosure.**

53 **7. A judgment or decree in any action brought pursuant to this section must include**
54 **costs and reasonable attorney's fees for the prevailing party.**

55 **8. The association upon written request shall furnish to a unit owner a recordable**
56 **statement setting forth the amount of unpaid assessments against such owner's unit. The**
57 **statement must be furnished within ten business days after receipt of the request and is**
58 **binding on the association, the executive board and every unit owner.**

449.317. 1. Except as provided in subsection 2 of this section, a judgment for
2 **money against the association if recorded is not a lien on the common elements, but is a lien**
3 **in favor of the judgment lienholder against all of the units in the planned community at the**
4 **time the judgment was entered. No other property of a unit owner is subject to the claims**
5 **of creditors of the association.**

6 **2. If the association has granted a security interest in the common elements to a**
7 **creditor of the association pursuant to section 449.312, the holder of that security interest**
8 **shall exercise its right against the common elements before its judgment lien on any unit**
9 **may be enforced.**

10 **3. Whether perfected before or after the creation of the planned community, if a**
11 **lien other than a security interest, including a judgment lien or lien attributable to work**
12 **performed or materials supplied before creation of the planned community, becomes**
13 **affective against two or more units, the unit owner of an affected unit may pay to the**
14 **lienholder the amount of the lien attributable to the unit owner's unit, and the lienholder,**
15 **upon receipt of payment, promptly shall deliver a release of the lien covering that unit.**
16 **The amount of the payment must be proportionate to the ratio which that unit owner's**
17 **common expense liability bears to the common expense liabilities of all unit owners whose**
18 **units are subject to the lien. After payment, the association may not assess or have a lien**
19 **against that unit owner's unit for any portion of the common expenses incurred in**

20 connection with that lien.

21 4. A judgment against the association must be indexed in the name of the planned
22 community and the association, and, when so indexed, is notice of the lien against the units.

449.318. The association shall keep financial records sufficiently detailed to enable
2 the association to comply with section 449.409. All financial and other records shall be
3 made reasonably available for examination by any unit owner and the unit owner's
4 authorized agents.

449.319. With respect to a third person dealing with the association in the
2 association's capacity as a trustee, the existence of trust powers and their proper exercise
3 by the association may be assumed without inquiry. A third person is not bound to inquire
4 whether the association has power to act as trustee or is properly exercising trust powers.
5 A third person, without actual knowledge that the association is exceeding or improperly
6 exercising its powers, is fully protected in dealing with the association as if it possessed and
7 properly exercised the powers it purports to exercise. A third person is not bound to
8 assure the proper application of trust assets paid or delivered to the association in its
9 capacity as trustee.

449.401. 1. Sections 449.401 to 449.420 apply to all units subject to this chapter,
2 except as provided in subsection 2 of this section or as modified or waived by agreement
3 of purchasers of units in a planned community in which all units are restricted to
4 nonresidential use.

5 2. Neither an original sale certificate nor a resale certificate need be prepared or
6 delivered in the case of:

- 7 (1) A gratuitous disposition of a unit;
- 8 (2) A disposition pursuant to court order;
- 9 (3) A disposition by a government or governmental agency;
- 10 (4) A disposition by foreclosure or deed in lieu of foreclosure;
- 11 (5) A disposition to a dealer;
- 12 (6) A disposition that may be canceled at any time and for any reason by the
13 purchaser without penalty; or
- 14 (7) A disposition of a unit restricted to nonresidential purposes.

449.402. 1. Except as provided in subsection 2 of this section, a declarant, prior to
2 the offering of any interest in a unit to the public, shall prepare an original sale certificate
3 conforming to the requirements of sections 449.403, 449.404, 449.405 and 449.406.

4 2. A declarant may transfer responsibility for preparation of all or a part of the
5 original sale certificate to a successor declarant or to a dealer. In the event of any such
6 transfer, the transferor shall provide the transferee with any information necessary to

7 enable the transferee to fulfill the requirements of subsection 1 of this section.

8 **3. Any declarant or dealer who offers a unit to a purchaser shall deliver an original**
9 **sale certificate in the manner prescribed in section 449.408. The person who prepared all**
10 **or a part of the original sale certificate is liable pursuant to sections 449.408 and 449.417**
11 **for any false or misleading statement set forth therein or for any omission of material fact**
12 **therefrom with respect to that portion of the original sale certificate which the declarant**
13 **prepared. If a declarant did not prepare any part of an original sale certificate that such**
14 **declarant delivers, such declarant is not liable for any false or misleading statement set**
15 **forth therein or for any omission of material fact therefrom unless such declarant had**
16 **actual knowledge of the statement or omission or, in the exercise of reasonable care, should**
17 **have known of the statement or omission.**

18 **4. If a unit is part of two or more planned communities or is part of a planned**
19 **community and is part of any other real estate regime in connection with the sale of which**
20 **the delivery of an original sale certificate is required pursuant to the laws of this state, a**
21 **single original sale certificate conforming to the requirements of sections 449.403, 449.404,**
22 **449.405 and 449.406 as those requirements relate to each planned community in which the**
23 **unit is located, and to any other requirements imposed pursuant to the laws of this state,**
24 **may be prepared and delivered in lieu of providing two or more original sale certificates.**

449.403. 1. Except as provided in subsection 2 of this section, an original sale
2 **certificate must contain and fully and accurately disclose:**

3 **(1) The names and principal addresses of the declarant and of the planned**
4 **community, and a statement that the community is a planned community;**

5 **(2) A general description of the planned community, including, to the extent**
6 **possible, the types, number and declarant's schedule of commencement and completion of**
7 **construction of buildings and amenities that declarant anticipates including in the planned**
8 **community;**

9 **(3) The number of units in the planned community;**

10 **(4) Copies and a brief narrative description of the significant features of the**
11 **declaration, other than the plats and plans, and any other recorded covenants, conditions,**
12 **restrictions and reservations affecting the planned community; the bylaws, and any rules**
13 **or regulations of the association; copies of any contracts and leases to be signed by**
14 **purchasers at closing; and a brief narrative description of any contracts or leases that will**
15 **or may be subject to cancellation by the association pursuant to section 449.305;**

16 **(5) Any current balance sheet and a projected budget for the association, including**
17 **reasonable reserves for repair and replacement, either within or as an exhibit to the**
18 **original sale certificate, for one year after the date of the first conveyance to a purchaser,**

19 and thereafter the current budget of the association, a statement of who prepared the
20 budget, and a statement of the budget's assumptions concerning occupancy and inflation
21 factors. The budget must include, without limitation:

22 (a) A statement of the amount, or a statement that there is no amount, included in
23 the budget as a reserve for repairs and replacement;

24 (b) A statement of any other reserves;

25 (c) The projected common expense assessment by category of expenditures for the
26 association; and

27 (d) The projected monthly common expenses assessment for each type of unit;

28 (6) Any services not reflected in the budget that the declarant provides, or expenses
29 that said declarant pays, and that said declarant expects may become at any subsequent
30 time a common expense of the association and the projected common expense assessment
31 attributable to each of those services or expenses for the association and for each type of
32 unit;

33 (7) Any initial or special fee due from the purchaser at closing, together with a
34 description of the purpose and method of calculating the fee;

35 (8) A description of any liens, defects or encumbrances on or affecting the title to
36 the planned community;

37 (9) A description of any financing offered or arranged by the declarant;

38 (10) The terms and significant limitations of any warranties provided by the
39 declarant, including statutory warranties and limitations on the enforcement thereof or on
40 damages;

41 (11) A statement that:

42 (a) Within ten days after receipt of an original sale certificate and before
43 conveyance, the seller may cancel any contract for purchase of a unit from a declarant;

44 (b) If a purchaser receives the public offering statement more than ten days before
45 signing a contract, such purchaser cannot cancel the contract;

46 (c) Describes any unsatisfied judgments or pending suits against the association,
47 and the status of any pending suits material to the planned community of which a
48 declarant has actual knowledge;

49 (12) A statement that any deposit made in connection with the purchase of a unit
50 will be held in an escrow until closing and will be returned to the purchaser if the
51 purchaser cancels the contract pursuant to section 449.408, together with the name and
52 address of the escrow agent;

53 (13) Any restraints on alienation of any portion of the planned community;

54 (14) A description of the insurance coverage provided for the benefit of unit

55 owners;

56 (15) Any current or expected fees or charges to be paid by unit owners for the use
57 of any common elements and other facilities related to the planned community;

58 (16) A list of all improvements contemplated in the planned community which the
59 declarant reserves the right not to build, and a list of all improvements contemplated in the
60 planned community which the declarant is obligated to build, as provided in sections
61 449.418 and 449.419;

62 (17) Any contingencies related to development or sales achievements of the planned
63 community contained in financial arrangements which declarant has obtained for all
64 improvements labeled "SHALL BE BUILT" pursuant to section 449.419, but incomplete
65 at time of the execution of the sale contract;

66 (18) A brief narrative description of any zoning and other land use requirements
67 affecting the planned community; and

68 (19) All unusual and material circumstances, features and characteristics of the
69 planned community and the units.

70 2. If a planned community composed of not more than twelve units is not subject
71 to any development rights, and no power is reserved to a declarant to make the planned
72 community part of a larger planned community, group of planned communities, or other
73 real estate, an original sale certificate may but need not include the information otherwise
74 required by subdivisions (9), (10), (15), (16), (17), (18) and (19) of subsection 1 of this
75 section, and the narrative descriptions of documents required by subdivision (4) of
76 subsection 1 of this section.

77 3. A declarant promptly shall amend the original sale certificate to report any
78 material change in the information required by this section.

449.404. If the declaration provides that a planned community is subject to any
2 development rights, the original sale certificate must disclose, in addition to the
3 information required by section 449.403:

4 (1) The maximum number of units, the maximum number of units per acre, and
5 the estimated completion date, to the extent reasonably ascertainable, which may be
6 created;

7 (2) A statement of the extent of nonresidential use to which any real estate or unit
8 may be put, regardless of when added to the planned community;

9 (3) If any of the units that may be built within real estate subject to development
10 rights are not to be restricted exclusively to residential use, a statement, with respect to
11 each portion of that real estate, of the maximum percentage of the real estate areas, and
12 the maximum percentage of the floor areas of all units that may be created therein, that

13 are not restricted exclusively to residential use;

14 (4) A brief narrative description of any development rights reserved by a declarant
15 and of any conditions relating to or limitations upon the exercise of development rights,
16 including a description of improvements labeled "SHALL BE BUILT" and "NEED NOT
17 BE BUILT" as provided by the plat;

18 (5) A statement of the maximum extent to which each unit's allocated interests may
19 be changed by the exercise of any development right described in subdivision (3) of this
20 section;

21 (6) A statement of the extent to which any buildings or other improvements that
22 may be erected pursuant to any development right in any part of the planned community
23 will be compatible with existing buildings and improvements in the planned community
24 in terms of architectural style, quality of construction and size, or a statement that no
25 assurances are made in those regards;

26 (7) General descriptions of all other improvements that may be made and limited
27 common elements that may be created within any part of the planned community pursuant
28 to any development right reserved by the declarant, or a statement that no assurances are
29 made in that regard;

30 (8) A statement of any limitations as to the locations of any building or other
31 improvement that may be made within any part of the planned community pursuant to any
32 development right reserved by the declarant, or a statement that no assurances are made
33 in that regard;

34 (9) A statement that any limited common elements created pursuant to any
35 development right reserved by the declarant will be of the same general types and sizes as
36 the limited common elements within others parts of the planned community, or a statement
37 of the types and sizes planned, or a statement that no assurances are made in that regard;

38 (10) A statement that the proportion of limited common elements to units created
39 pursuant to any development right reserved by the declarant will be approximately equal
40 to the proportion existing within other parts of the planned community, or a statement of
41 any other assurances in that regard, or a statement that no assurances are made in that
42 regard;

43 (11) A statement that all restrictions in the declaration affecting use, occupancy and
44 alienation of units will apply to any units created pursuant to any development right
45 reserved by the declarant, or a statement of any differentiations that may be made as to
46 those units, or a statement that no assurances are made in that regard; and

47 (12) A statement of the extent to which any assurances made pursuant to this
48 section apply or do not apply in the event that any development right is not exercised by

49 the declarant.

2 **449.405.** If the declaration provides that ownership or occupancy of any units is or
3 may be in time shares, the original sale certificate shall disclose, in addition to the
4 information required by section 449.403:

5 (1) The number and identity of units in which time shares may be created;

6 (2) The total number of time shares that may be created;

7 (3) The minimum duration of any time shares which may be created; and

8 (4) The extent to which the creation of time shares will or may affect the
9 enforceability of the association's lien for assessments provided in section 449.316.

2 **449.406. 1.** The original sale certificate statement of a planned community
3 containing any conversion building must contain, in addition to the information required
4 by section 449.403:

5 (1) A statement of work done, including the nature thereof, on the foundation,
6 structural members, roof, chimney, gutters and downspouts, exterior and interior walls,
7 ceilings, floors, windows, attic and wall insulation, including installer's statement of
8 present "R" value, sewers and stacks, plumbing system and related fixtures, electrical
9 system and related fixtures, and furnace and heating system, including the manufacturer's
10 energy efficiency ratio of any new heating or refrigeration equipment;

11 (2) A statement by the declarant of the expected useful life of each item reported
12 on in subdivision (1) of this subsection or a statement that no representations are made in
13 that regard; and a list of any outstanding notices of uncured violations of building code or
14 other municipal regulations.

15 **2.** This section applies only to buildings containing units that may be occupied for
residential use.

2 **449.407.** If an interest in a planned community is currently registered with the
3 Securities and Exchange Commission of the United States, a declarant satisfies all
4 requirements relating to the preparation of an original sale certificate of this chapter if
5 such declarant delivers to the purchaser a copy the original sale certificate filed with the
6 Securities and Exchange Commission. An interest in a planned community is not a
security pursuant to the provisions of the laws of this state.

2 **449.408. 1.** A person required to deliver an original sale certificate pursuant to
3 subsection 3 of section 449.402 shall provide a purchaser with the original sale certificate
4 and all amendments thereto before conveyance of that unit, and not later than the date of
5 any contract of sale. Unless a purchaser is given the original sale certificate more than ten
6 days before execution of a contract for the purchase of a unit, the purchaser, before
conveyance, may cancel the contract within ten days after first receiving the original sale

7 certificate.

8 **2. If a purchaser elects to cancel a contract pursuant to subsection 1 of this section,**
9 **such purchaser may do so by hand-delivering notice thereof to the offeror or by mailing**
10 **notice thereof by prepaid United States mail to the offeror or to the offeror's agent for**
11 **service of process. Cancellation is without penalty, and all payments made by the**
12 **purchaser before cancellation shall be refunded promptly.**

449.409. 1. Except in the case of a sale where delivery of an original sale certificate
2 **is required, or unless exempt pursuant to subsection 2 of section 449.401, a unit owner shall**
3 **furnish to a purchaser before the earlier of conveyance or transfer of the right to**
4 **possession of a unit, a resale certificate containing: a copy of the declaration, other than**
5 **the plats and plans, the bylaws, the rules or regulations of the association. Such resale**
6 **certificate shall disclose:**

7 **(1) The effect on the proposed disposition of any right of first refusal or other**
8 **restraint on the free alienability of the unit held by the association, and any restriction on**
9 **the owner's right to use or occupy the unit or to lease the unit to another person;**

10 **(2) The amount of the periodic common expense assessment and any unpaid**
11 **common expense assessment or special assessment currently due and payable from the**
12 **selling unit owner;**

13 **(3) Any other fees payable by unit owners;**

14 **(4) Any capital expenditures approved by the association for the current and two**
15 **next succeeding fiscal years;**

16 **(5) The amount of any reserves for capital expenditures and of any portions of**
17 **those reserves designated by the association for any specified projects;**

18 **(6) The most recent regularly prepared balance sheet and income and expense**
19 **statement, if any, of the association;**

20 **(7) The current operating budget of the association;**

21 **(8) Any unsatisfied judgments against the association and the status of any pending**
22 **suits in which the association is a defendant;**

23 **(9) Any insurance coverage provided for the benefit of unit owners;**

24 **(10) Whether the executive board has given or received any written notice that any**
25 **uses, occupancies, alterations or improvements to the unit or to any limited common**
26 **elements assigned thereto violate any provision of the declaration;**

27 **(11) Whether the executive board has received written notice from a governmental**
28 **agency of any violation of environmental, health or building codes with respect to the unit,**
29 **the limited common elements assigned thereto, or any other portion of the planned**
30 **community; and**

31 (12) The remaining term of any leasehold estate affecting the planned community
32 and the provisions governing any extension or renewal thereof.

33 2. The association, within ten days after a request by a unit owner, shall furnish a
34 resale certificate containing the information necessary to enable the unit owner to comply
35 with this section. A unit owner providing a certificate pursuant to subsection 1 of this
36 section is not liable to the purchaser for any erroneous information provided by the
37 association and included in the certificate.

38 3. A purchaser is not liable for any unpaid assessment or fee greater than the
39 amount set forth in the resale certificate prepared by the association. A unit owner is not
40 liable to a purchaser for the failure or delay of the association to provide the resale
41 certificate in a timely manner, but the purchase contract is voidable by the purchaser until
42 the certificate has been provided and for five days thereafter or until conveyance,
43 whichever first occurs.

 449.410. Any deposit made in connection with the purchase or reservation of a unit
2 from a person required to deliver an original sale certificate pursuant to subsection 3 of
3 section 449.402 shall be placed in escrow and held either in this state or in the state where
4 the unit is located until refunded to purchaser pursuant to section 449.408 or the
5 cancellation provided therein expires.

 449.411. 1. In the case of a sale of a unit where delivery of an original sale
2 certificate is required pursuant to subsection 3 of section 449.402, a seller shall, before
3 conveying a unit, record or furnish to the purchaser, releases of all liens affecting that unit
4 and any limited common elements assigned thereto which the purchaser does not expressly
5 agree to take subject to or assume, or shall provide a surety bond or substitute collateral
6 for or insurance against the lien. This subsection does not apply to any real estate which
7 a declarant has the right to withdraw.

8 2. Before conveying real estate to the association, the declarant shall have that real
9 estate released from:

10 (1) All liens the foreclosure of which would deprive unit owners of the right of
11 access to or easement of support of their units; and

12 (2) All other liens on that real estate unless the original sale certificate describes
13 certain real estate which may be conveyed subject to liens in specified amounts.

 449.412. 1. A declarant of a planned community containing conversion buildings,
2 and any dealer who intends to offer units in such a planned community, shall give each of
3 the residential tenants and any residential subtenant in possession of a portion of a
4 conversion building notice of the conversion and provide those persons with the original
5 sale certificate no later than one hundred twenty days before the tenants and any subtenant

6 in possession are required to vacate. The notice must set forth generally the rights of
7 tenants and subtenants pursuant to this section and shall be hand-delivered to the unit or
8 mailed by prepaid United States mail to the tenant and subtenant at the address of the unit
9 or any other mailing address provided by a tenant. No tenant or subtenant may be
10 required to vacate upon less than one hundred twenty-days' notice, except by reason of
11 nonpayment of rent, waste or conduct that disturbs other tenants' peaceful enjoyment of
12 the premises, and the terms of the tenancy may not be altered during that period. Failure
13 to give notice as required by this section is a defense to an action for possession.

14 2. For sixty days after delivery or mailing of the notice described in subsection 1
15 of this section, the person required to give the notice shall offer to convey each unit or
16 proposed unit occupied for residential use to the tenant who leases that unit. If a tenant
17 fails to purchase the unit during that sixty-day period, the offeror may not offer to dispose
18 of an interest in that unit during the following one hundred twenty days at a price or on
19 terms more favorable to the offeree than the price or terms offered to the tenant. This
20 subsection does not apply to any unit in a conversion building if that unit will be restricted
21 exclusively to nonresidential use or the boundaries of the converted unit do not
22 substantially conform to the dimensions of the residential unit before conversion.

23 3. If a seller, in violation of subsection 2 of this section, conveys a unit to a
24 purchaser for value who has no knowledge of the violation, recordation of the deed
25 conveying the unit extinguishes any right a tenant may have pursuant to subsection 2 of
26 this section to purchase that unit if the deed states that the seller has complied with
27 subsection 2 of this section, but does not affect the right of a tenant to recover damages
28 from the seller for a violation of subsection 2 of this section.

29 4. If a notice of conversion specifies a date by which a unit or proposed unit must
30 be vacated, and otherwise complies with the provisions of sections 441.050 and 441.060,
31 RSMo, the notice also constitutes notice to vacate specified by that statute.

32 5. Nothing in this section permits termination of a lease by a declarant in violation
33 of its terms.

449.413. 1. Express warranties made by any seller to a purchaser of a unit, if relied
2 upon by the purchaser, are created as follows:

3 (1) Any affirmation of fact or promise which relates to the unit, its use or rights
4 appurtenant thereto, improvements that would directly benefit the unit or the right to use
5 or have the benefit of facilities not located in the planned community, creates an express
6 warranty that the unit and related rights and uses will conform to the affirmation or
7 promise;

8 (2) Any model or description of the physical characteristics of the planned

9 community, including plans and specifications of or for improvements, creates an express
10 warranty that the planned community will conform to the model or description;

11 (3) Any description of the quantity or extent of the real estate comprising the
12 planned community, including plats or surveys, creates an express warranty that the
13 planned community will conform to the description, subject to customary tolerances; and

14 (4) A provision that a purchaser may put a unit only to a specified use is an express
15 warranty that the specified use is lawful.

16 2. Neither formal words, such as "warranty" or "guarantee", nor a specific
17 intention to make a warranty, are necessary to create an express warranty of quality, but
18 a statement purporting to be merely an opinion or commendation of the real estate or its
19 value does not create a warranty.

20 3. Any conveyance of a unit transfers to the purchaser and all subsequent
21 purchasers all express warranties of quality made by previous sellers.

449.414. 1. A declarant and dealer warrants that a unit will be in at least as good
2 condition at the earlier of the time of the conveyance or delivery of possession as it was at
3 the time of contracting, reasonable wear and tear excepted.

4 2. A declarant and a dealer impliedly warrants that a unit and the common
5 elements in the planned community are suitable for the ordinary uses of real estate of its
6 type and that any improvements made or contracted for by the declarant or dealer, or
7 made by any person before the creation of the planned community, will be:

8 (1) Free from defective materials; and

9 (2) Constructed in accordance with applicable law, according to sound engineering
10 and construction standards and in a workmanlike manner.

11 3. In addition, a declarant and a dealer warrants to a purchaser of a unit that may
12 be used for residential use that an existing use, continuation of which is contemplated by
13 the parties, does not violate applicable law at the earlier of the time of conveyance or
14 delivery of possession.

15 4. Warranties imposed by this section may be excluded or modified as specified in
16 section 449.415.

17 5. For purposes of this section, improvements made or contracted for by an affiliate
18 of a declarant are made or contracted for by the declarant.

19 6. Any conveyance of a unit transfers to the purchaser and subsequent purchasers
20 all of any declarant's implied warranties of quality.

449.415. 1. Except as limited by subsection 2 of this section with respect to a
2 purchaser of a unit that may be used for residential use, implied warranties of quality:

3 (1) May be excluded or modified by agreement of the parties; and

4 (2) Are excluded by expression of disclaimer, such as "as is", "with all faults", or
5 other language which in common understanding calls the purchaser's attention to the
6 exclusion of warranties.

7 2. With respect to a purchaser of a unit that may be occupied for residential use,
8 no general disclaimer of implied warranties of quality of the unit or any of the common
9 elements is effective, but a declarant and a dealer may disclaim liability in an instrument
10 signed by the purchaser:

11 (1) For a specified defect or specified failure to comply with applicable law, if the
12 defect or failure entered into and became a part of the basis of the bargain; or

13 (2) For any defect in improvements which are otherwise covered by express
14 warranties.

 449.416. 1. Unless the limitation period is tolled pursuant to section 449.417 or as
2 provided in subsection 4 of this section, a judicial proceeding for breach of any obligation
3 arising pursuant to section 449.413 or 449.414 must be commenced within three years after
4 the cause of action accrues.

5 2. Subject to subsection 3 of this section, a cause of action for breach of warranty
6 of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

7 (1) As to a unit, at the time the purchaser to whom the warranty is first made enters
8 into possession if a possessory interest was conveyed or at the time of acceptance of the
9 instrument of conveyance if a nonpossessory interest was conveyed; and

10 (2) As to each common element, except as provided in subsection 4 of this section,
11 a judicial proceeding for breach of any obligation to the association arising pursuant to
12 section 449.413 or 449.414 shall be commenced within three years after the cause of action
13 accrues. Subject to subsections 3 and 4 of this section, a cause of action of the association
14 for breach of warranty of quality, as to each common element, accrues at the time the
15 common element is completed or, if later:

16 (a) As to a common element which is added to the planned community by exercise
17 of development rights, at the time the first unit therein is conveyed to a bona fide
18 purchaser; or

19 (b) As to a common element within any other portion of the planned community,
20 at the time the first unit in the planned community is conveyed to a purchaser.

21 3. If a warranty of quality explicitly extends to future performance or duration of
22 any improvement or component of the common elements, the cause of action accrues at the
23 time the breach is discovered or at the end of the period for which the warranty explicitly
24 extends, whichever is earlier.

25 4. During the period of declarant control, the association may authorize an

26 independent committee of the executive board to evaluate and enforce by any lawful means
27 warranty claims involving the common elements and to compromise those claims. Only
28 members of the executive board elected by unit owners other than the declarant and other
29 persons appointed by those independent members may serve on the committee and the
30 committee's decision shall be free of any control by the declarant or any member of the
31 executive board or officer appointed by the declarant. All costs reasonably incurred by the
32 committee, including attorney's fees, are common expenses and shall be added to the
33 budget annually adopted by the association pursuant to section 449.315. If the committee
34 is so created, the limitation period for claims for these warranties begins to run from the
35 date of the first meeting of the committee, regardless of when declarant control terminates.

449.417. 1. If a declarant or any other person subject to this chapter fails to comply
2 with any provision hereof or any provision of the declaration or bylaws, any person or
3 class of persons adversely affected by the failure to comply has a claim for appropriate
4 relief. Punitive damages may be awarded for a willful, wanton and malicious failure to
5 comply with this chapter. The court, in an appropriate case, may award court costs and
6 reasonable attorney's fees.

7 2. Parties to a dispute arising pursuant to this chapter, the declaration or the
8 bylaws may agree to resolve the dispute by any form of binding or nonbinding alternative
9 dispute resolution, but:

10 (1) A declarant may agree with the association to do so only after the period of
11 declarant control passes, unless the agreement is made with an independent committee of
12 the executive board pursuant to subsection 4 of section 449.416;

13 (2) An agreement to submit to binding arbitration must be made in writing signed
14 by the parties; and

15 (3) Except as provided in subsection 4 of section 449.416, any statute of limitation
16 affecting any right of action of the association against a declarant pursuant to this chapter
17 is tolled until the period of declarant control terminates.

449.418. If any improvement contemplated in a planned community is labeled
2 "NEED NOT BE BUILT" on a plat or plan, or is to be located within a portion of the
3 planned community with respect to which the declarant has reserved a development right,
4 no promotional material may be displayed or delivered to prospective purchasers which
5 describes or portrays that improvement unless the description or portrayal of the
6 improvement in the promotional material is conspicuously labeled or identified as "NEED
7 NOT BE BUILT".

449.419. 1. Except for improvements labeled "NEED NOT BE BUILT", the
2 declarant shall complete all improvements depicted on any site plan or other graphic

3 representation, including any plats or plans prepared pursuant to section 449.209, whether
4 or not that site plan or other graphic representation is contained in the original sale
5 certificate or in any promotional material distributed by or for the declarant.

6 2. The declarant is subject to liability for the prompt repair and restoration, to a
7 condition compatible with the remainder of the planned community, of any portion of the
8 planned community affected by the exercise of rights reserved pursuant to or created by
9 section 449.210, 449.211, 449.212, 449.213, 449.215 or 449.216.

 449.420. In the case of sale of a unit where delivery of an original sale certificate is
2 required, a contract of sale may be executed, but no interest in that unit may be conveyed
3 until the declaration is recorded and the unit is substantially completed, as evidenced by
4 a recorded certificate of substantial completion executed by an independent registered
5 architect, surveyor or engineer, or by issuance of a certificate of occupancy authorized by
6 law.